

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 22-01139-mg

5 - - - - - x

6 In the Matter of:

7

8 CELSIUS NETWORK, LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED, et al.,

13 Plaintiff,

14 v.

15 STONE, et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 January 11, 2023

23 9:00 AM

24

25

1 B E F O R E :

2 HON. MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

4

5 ECRO: KAREN

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1 Adversary Proceeding: 22-01139-mg Celsius Network Limited et
2 al v. Stone et al

3 Hybrid Evidentiary Hearing RE: Motion of Plaintiffs for
4 Preliminary Injunction Pursuant to Rule 7065 of the Federal
5 Rules of Bankruptcy Procedure. (Doc # 20 to 25, 27 to 29, 32
6 to 34, 42 to 45, 51 to 53, 57, 58) Hybrid Evidentiary
7 Hearing Scheduled for 1/11/22 at 9 AM & 1/12/22 at 9 AM.
8

9 Hearing Using Zoom for Government RE: Motion of Plaintiffs
10 for Preliminary Injunction Pursuant to Rule 7065 of the
11 Federal Rules of Bankruptcy Procedure (Doc# 1353 to 1358,
12 1361) Going Forward on 01/11/2023 at 9:00 am and 01/12/2023
13 at 9:00 am.
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25 Transcribed by: Sonya Ledanski Hyde

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23 ALSO PRESENT:

24 JASON STONE (TELEPHONICALLY)

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I N D E X

W I T N E S S E S

PLAINTIFF:			RE	RE	V.	
WITNESS	DIRECT	CROSS	DIRECT	CROSS	D.	J
Alex Mashinsky	31	34				
Patrick Holert	94	95	106			
DEFENDANT:			RE	RE	V.	
WITNESS	DIRECT	CROSS	DIRECT	CROSS	D.	J
Connor Nolan		124	158			
Jason Stone	175	185	287	310		

E X H I B I T S

PLAINTIFF:		
IDENTIFICATION	DESCRIPTION	PAGE
Exhibit 53	Holert declaration	95
Exhibit 59	Mashinsky declaration	33
Exhibit 60	Holert declaration	95
Exhibit 70	Spreadsheet	260
DEFENDANTS:		
IDENTIFICATION	DESCRIPTION	PAGE
Exhibits 1 - 33		56/134
Exhibit 31	Stone Affidavit	178
Exhibit 36	Response to Tweet	179
Exhibit 40	Email Chain	53

P R O C E E D I N G S

THE COURT: Good morning to everybody. So, we're here on a preliminary injunction hearing in Celsius v. Stone, et al., which is Judge Glenn. Obviously, I'm not in the courtroom today. While I am free of COVID, I've been in close contact with someone with COVID and under the Court's COVID protocols, I'm unable to be in the courtroom. I advised counsel -- to both parties of this yesterday and the decision was jointly made to go forward with the hearing today. Hard copies of all of the exhibits -- and I also have all of the exhibits electronically available to me on a separate computer, as well.

So, before we get started, I want to make a quick note regarding the discipline and structure of the hearings taking place today and possibly tomorrow in Celsius Network Limited v. Stone, et al. Over 200 participants registered for today's hearings. This is a public trial and as such, participants other than Celsius, KeyFi and Stone and their counsel, have the right to be present via Zoom and to listen to the proceedings. However, the only parties permitted to speak today are those directly involved in the lawsuit, namely the lawyers who've made their appearances and the witnesses who will testify from the witness stand. As I say, so those parties include Celsius Network Limited, Jason Stone, KeyFi, Inc. and any witness that the parties call to

1 the stand and counsel representing those parties.

2 Other participants, including other people who are
3 observing the hearing, including pro se Celsius creditors
4 are not parties to this proceeding and may not speak at
5 today's hearing. I will not be calling on people to speak
6 via raised hand, the Hands function, as I have in other
7 hearings. Those who are watching the proceeding on Zoom
8 must have their Zoom line muted and their cameras turned
9 off. If any participant who is not explicitly authorized to
10 speak unmutes themselves or attempts to speak at the
11 hearing, you will promptly be disconnected and may not
12 return to the hearing. So, with that, let me first call on
13 Mr. Hurley. Is there anything you want to raise before we
14 get started, Mr. Hurley?

15 MR. HURLEY: Good morning, Your Honor. Mitch
16 Hurley with Akin Gump Strauss Hauer & Feld, on behalf of the
17 Plaintiffs. Nothing other than that, along with Defense
18 counsel, we agreed to 15-minute opening statements.

19 THE COURT: All right. Okay. So, Mr. Freedman,
20 was there anything that you want to say to start?

21 MR. FREEDMAN: Nothing, Your Honor.

22 THE COURT: All right. So, I'll listen to the
23 opening statements and then I'm going to raise some
24 questions about a group of exhibits as to which there are
25 objections and want to hear briefly with respect to those

1 objections before we actually get into the evidence. Mr.
2 Hurley, did you want to start with your opening statement?

3 MR. HURLEY: Thank you, Your Honor. Again, for
4 the record, it's Mitch Hurley with Akin Gump Strauss Hauer &
5 Feld, on behalf of the Plaintiffs. Your Honor, it's
6 undisputed in this case that the Defendants used their
7 access to Celsius' seed phrase and private keys to access
8 Celsius wallets and take millions of coins, transfer them
9 from Celsius wallets to their own wallets, coins that are
10 worth millions of dollars, in a series of transactions that
11 numbered in the many dozens. There is no evidence of any
12 significance that what happened is anything other than what
13 it seems, which is an example of conversion, of taking
14 property belonging to Celsius and refusing to return it
15 despite due and repeated demand for the return of that
16 property by Celsius.

17 What we're seeking, what Celsius is seeking today,
18 Your Honor, is a status quo injunction. We're only asking
19 the Court to enter relief necessary to ensure that that
20 property that the Defendants admit they took and appears to
21 be the only property that could satisfy any judgment in this
22 case, will still be available to satisfy a judgment at the
23 end of the case. And it's necessary, Your Honor. The
24 evidence is going to show that not only did the Defendants
25 take enormous amounts of Celsius property, but they already

1 have squandered huge amounts of that property and are unable
2 to account for the location of much of it. Without the
3 entry of an injunction, it is crystal clear that more of the
4 same is going to happen and that the assets that -- we know
5 he has some assets still, and after the injunction, those
6 assets are almost certain to go the way of the assets that
7 you'll hear about today that he already has either
8 squandered or doesn't know where they are. So, it's a
9 status quo injunction, Your Honor.

10 I'm going to talk briefly about the merits. Your
11 Honor, if I could just pause for a second. Your camera is,
12 sort of, pointed just at your chest. Okay. Thank you. So,
13 I want to talk briefly about the merits. So, the claims
14 that Celsius asserts are supported overwhelmingly by the
15 evidence. That includes Celsius claims for turnover, for
16 conversion, for unjust enrichment, for an accounting for
17 (Plevin?).

18 Those claims are all animated by the same central
19 facts, which are first, the undisputed facts that the
20 Defendants used their access to Celsius' private keys, to
21 take Celsius' property. Again, that's not denied, it's
22 actually stipulated to in the PTO and there is other
23 evidence we're going to present today concerning those
24 transfers.

25 So, why are we here today if that's admitted?

1 We're here because the Defendants assert an affirmative
2 defense, which is that, though they took the property, they
3 claim that they were authorized to do so. Specifically,
4 they claim they were authorized to take that property by
5 Alex Mashinsky. But their evidence for that proposition,
6 Your Honor, is almost nothing. Their evidence for that
7 proposition is solely the unsupported and self-serving claim
8 of one of the Defendants, Mr. Stone, that Alex Mashinsky
9 told him he could take these millions and millions of
10 dollars' worth of property. That claim is denied by Mr.
11 Mashinsky as you'll hear today. It's denied by the supposed
12 witnesses of Mr. Stone that the Defendants identify as
13 people that may have been witnesses to the authorizations,
14 including Mr. Holert and Mr. Nolan. They will not offer any
15 support for that claim. The Defendants have not come
16 forward with any documentary evidence, not an email, not a
17 text message, not a WhatsApp communication, nothing.

18 The claim is contradicted by the contracts to
19 which some of the parties to this litigation were party and
20 we're going to look at those contracts today. The claim is
21 contrary to the admitted course of conduct in 2021, which
22 includes an admission that in 2021, far from authorizing the
23 Defendants to take property, Celsius demanded the return of
24 all of its digital assets. It did so, again, in March
25 through formal Board resolutions. Those resolutions

1 included a formal demand for return of the seed phrase and
2 private keys. Those demands continued -- again, it's
3 undisputed, over the course of the summer. And this is
4 critical, Your Honor. Many of the transfers that we're
5 talking about, the Defendants went in with their private
6 keys and took assets from Celsius and transferred to
7 themselves, happened after Mr. Stone resigned. They
8 happened after the Defendant set formal Board resolutions --
9 sorry, Celsius sent formal Board resolutions to Defendants
10 demanding the return of all their property and their private
11 keys. But that didn't stop them. The Defendants kept
12 making these transfers.

13 One example, particular egregious, I've referenced
14 it before, Your Honor. In September of 2021, six months
15 after Mr. Stone resigned, he used his access to the private
16 keys, the same ones who he demanded the return of in March.
17 He knew there was going to be an Airdrop of 1.4 million DAI,
18 which is a stable coin, so it's \$1.4 million, from a
19 platform to the OXB-1 wallet, which is Celsius' wallet. He
20 went in a couple of days later, transferred that 1.4 million
21 DAI out, converted it to ETH and then laundered that ETH
22 through Tornado Cash, which is the application that's been
23 banned by OFAC. This is undisputed, Your Honor. He took
24 half of it, and he gave it to some of his people that he
25 calls his co-founders of KeyFi that he calls his co-founders

1 of KeyFi, he kept half for himself. He doesn't know what
2 happened to that half, \$600,000-700,000, but he knows he
3 spent most of it.

4 Your Honor, all we have to show on the merits for
5 our motion is that we demonstrated that there is a serious
6 question for litigation here. The evidence I think you'll
7 see today demonstrates far more than that. We believe the
8 merits are crystal clear in this case in favor of Celsius.

9 I want to talk about irreparable harm, briefly.
10 There is vast evidence of prior transfers and secretions by
11 the Defendants using the speed and anonymity of the block
12 chain to make it difficult to track their transfers, make it
13 difficult to identify and recover property. They've done it
14 again and again.

15 Many cases have recognized, particularly in the
16 block chain setting, that it's important to enter an
17 injunction to prevent that kind of transfers because it is
18 so easy to use the block chain in a way that makes it
19 difficult to recover property, to put assets out of reach of
20 the Court. And in this case, Your Honor, the Defendants
21 promise that they're going to dissipate these assets if you
22 don't enter an injunction. They have said that they're the
23 only assets available. KeyFi has argued that the assets are
24 necessary for KeyFi to fund its defense and that they're
25 going to use it for that purpose without an injunction.

1 And in closing, Your Honor, I'm going to cite a
2 series of cases, unanimous as far as I know, that when a
3 party is alleged, on a motion for an injunction, to have
4 taken property by illicit means, that that party is never
5 permitted to use the assets that they took from the Movant
6 to fund their defense costs, and certainly, it's not a
7 reason for denying an injunction. They complain that
8 Celsius delayed, that we should have brought this motion
9 sooner. The evidence is going to show that, and the
10 Stipulation provides in our view, that the delay was
11 justified under the circumstances including, because Celsius
12 spent a substantial amount of time seeking to recover its
13 property voluntarily, believing that that was the best path
14 forward to try to recover assets for the benefit of its
15 depositors and then later, it's creditors. There was a
16 standstill agreement in place, that was requested by the
17 Defendant's counsel, that remained in place until shortly
18 before the bankruptcy was filed. And of course, the
19 bankruptcy Stay came down and there were many distractions
20 surrounding the bankruptcy.

21 Ultimately, after the Defendants indicated clearly
22 that they were not prepared to enter into a voluntary
23 injunction, providing, what we believe the Stay already
24 provides, which is preventing them from further secreting
25 these assets, then we made our motion. But at the end of

1 the day, Your Honor, delay in this context is only relevant
2 to the extent that it suggests that there isn't really a
3 risk of irreparable harm. But you don't have to wonder that
4 here because the Defendants have said they're going to
5 dissipate these assets, the only assets available to satisfy
6 judgment. They're going to dissipate them without the
7 injunction.

8 And then finally, Your Honor, on the irreparable
9 harm, balancing of the harms, we're seeking a status quo
10 injunction. Case after case says that when the Movant faces
11 the risk of having no assets to recover if they ultimately
12 gained a judgment at the end of the case and the non-Movant
13 is merely restricted, temporarily, from accessing those
14 assets, the balance weighs in favor of the Movant, and we
15 submit it clearly does here.

16 So, finally, Your Honor, and in conclusion, it is
17 clear that without this injunction, Celsius' creditors will
18 suffer. Without this injunction, the assets we're talking
19 about, that admittedly were taken from Celsius' platform,
20 are going to be used for purposes other than creditor
21 recoveries. And the Defendants will only be further
22 emboldened if they are allowed to continue in this course of
23 conduct that they admit and that we're going to further
24 establish today. Under the circumstances, Your Honor, we
25 urge the Court to enter the injunction. Thank you.

1 THE COURT: Thank you very much, Mr. Hurley. Mr.
2 Roche?

3 MR. ROCHE: Yes. Good morning, Your Honor. We
4 would ask -- we have a few exhibits that are not opposed we
5 would like to use in the opening, and I know we were asked
6 by Deanna if we could share via Zoom. If you could make --

7 THE COURT: If you would tell me, which exhibits
8 they are. I have hard copies of the exhibits in front of
9 me.

10 MR. ROCHE: Great. I will get that in one second,
11 Your Honor.

12 THE COURT: All right.

13 MR. ROCHE: Your Honor, Exhibits 40 and 45.

14 THE COURT: These are your exhibits or Mr.
15 Hurley's?

16 MR. ROCHE: They're Mr. Hurley's exhibits.

17 THE COURT: All right.

18 MR. ROCHE: He asked.

19 THE COURT: Okay. I've got those. Go ahead.

20 MR. ROCHE: In their Amended Complaint, and in Mr.
21 Hurley's opening statement, Defendant, Celsius, attempts to
22 paint Mr. Stone and KeyFi as thieves. He argues that the
23 reason Mr. Stone and KeyFi used a program called Tornado
24 Cash, was to conceal their theft and put stolen property
25 outside of Celsius' reach. And while I didn't hear it

1 mentioned in Mr. Hurley's opening this morning, in their
2 motion for Preliminary Injunction, Celsius argued that
3 Defendants would soon steal from Celsius again, arguing that
4 KeyFi could soon be capable of stealing another \$35 million
5 worth of Ethereum. The problem for Celsius? Their
6 narrative of the dispute and their attempt to use Defendants
7 as scapegoats for their own organizational dysfunction falls
8 under the facts.

9 THE COURT: Let me ask you, though, Mr. Roche,
10 does Stone and KeyFi have the private key for wallets
11 holding the additional \$35 million that you've referred to?

12 MR. ROCHE: They do not.

13 THE COURT: Okay. Go ahead.

14 MR. ROCHE: And that has been -- as part of the
15 pre-trial stipulation that the judge so ordered, both
16 parties recognize that he did not. The evidence the Court
17 will hear today will show three things indisputably. That
18 (1) the Defendants never stole anything, nor did they hide
19 their purchases of the NFTs that Celsius complains that they
20 stole. To the contrary, not only did Celsius know about
21 these purchases before Mr. Stone left, Mr. Stone himself
22 actively and publicly used his popular Twitter account to
23 broadcast and celebrate the purchases of these NFTs.
24 Second, up until Mr. Stone left his position of Celsius
25 KeyFi, everyone, including the witnesses who Celsius will

1 have testify today, understood that KeyFi's activities were
2 highly profitable. In fact, Mr. Mashinsky himself
3 proclaimed that KeyFi was the most profitable of Celsius'
4 partners. And third, Celsius' efforts, at great expense to
5 creditors, to track numerous NFT purchases through block
6 chain forensics in their motion, to apparently uncover the
7 NFTs that Defendants purchased, was completely unnecessary.

8 Defendants never hid these transactions. How do
9 we know that? Well, first, Defendants itemized most of
10 these transactions and provided these transactions to
11 Celsius nearly a year ago. But second, Mr. Stone himself
12 tweeted out the links to these transactions while he was
13 still employed at Celsius.

14 Now, the elephant in the room is this, how can two
15 sides be so far apart in their characterizations of what
16 actually happened? Celsius, on one hand, is claiming that
17 Defendants stole tens of millions of dollars of assets that
18 belonged to Celsius. KeyFi and Mr. Stone on the other hand
19 have asserted both here and in a previous lawsuit filed in
20 New York State, that is Celsius who owes them eight-figure
21 payments in the form of profit payouts.

22 At the heart of this dispute is the Asset Purchase
23 Agreement, which contemplated Celsius paying Defendants for
24 their efforts managing nearly \$2 billion worth of assets
25 through, in part, a profit share. Now, if you calculate

1 that profit share on a dollar basis, KeyFi returned more
2 than \$800 million in profits. However, if you calculate
3 KeyFi's profits in coin-based accounting, the profits
4 generated by KeyFi are far less. Celsius doesn't address
5 this elephant in the room because they know the bargain that
6 they struck accounted for profits in dollar-based
7 accounting. They know this because shortly before Mr. Stone
8 resigned as the CEO of Celsius KeyFi, they found out that
9 their dollar-based accounting methods put aside Celsius
10 KeyFi, for Celsius itself left a giant hole in its balance
11 sheet. They discovered that in early 2021. And since that
12 time, Mr. Mashinsky and other employees at Celsius have set
13 out to cover this up through fraud, lies and by using my
14 clients as scapegoats for their own ineptitude.

15 Your Honor, I want to thank you for your time and
16 attention to this important matter. I am joined today by my
17 co-counsel, Vel Freedman, and together, we represent Jason
18 Stone and KeyFi, Inc. Sitting with me today is the
19 Defendant, Jason Stone, who is the CEO of KeyFi.

20 I'm going to spend the rest of my time this
21 morning quickly addressing three topics. First, the
22 timeline of events in this case, second, the witnesses you
23 will hear testify and third, the issues this Court must
24 decide.

25 On the first point, the evidence in this case can

1 be broken down into three distinct time periods. First,
2 July through December 2020. This is the period of time when
3 Mr. Stone and KeyFi first began deploying customer deposits
4 on behalf of Celsius without a formal agreement in place.
5 Second, from January through March 9, 2021. This is the
6 period after which the APA was executed and prior to Mr.
7 Stone's resignation.

8 And finally, everything that has happened since
9 then, March 9, 2021 through present. During this period,
10 the parties attempted to resolve this dispute. Those
11 attempts eventually failed and came to a conclusion when
12 KeyFi brought suit for breach of contract under the APA in
13 New York State and Celsius filing this adversary action
14 roughly two months later.

15 Starting with the first time period. Celsius
16 first sent KeyFi \$7.3 million in customer deposits for KeyFi
17 to deploy in August of 2020. Celsius continued sending
18 KeyFi those customer deposits throughout August and
19 September, without any agreement in place. In early October
20 2020, the parties entered into an MOU and what is referred
21 to as an Old Services Agreement. These informal agreements
22 essentially provided the framework for the compensation that
23 KeyFi and Celsius would eventually agree to for KeyFi to
24 manage and deploy assets into KeyFi. Throughout this time
25 period, from October 2020 through December 2020, Celsius

1 sent to KeyFi more than \$300 million in customer deposits in
2 weekly installments, every week. The testimony you will
3 hear will show that all of the transactions KeyFi engaged in
4 were publicly traceable and that Celsius employees used a
5 program called DeBank to track KeyFi's positions. You will
6 also hear that, during this time, everyone at Celsius and
7 KeyFi understood that its activities were wildly profitable.

8 But what Celsius now claims is this, that despite
9 making eight-figure deployments into KeyFi, Stone's
10 representations concerning KeyFi's investments were
11 misleading. Yet both in its pre-Trial submissions, and in
12 the testimony you will hear today, Celsius fails to point to
13 a single piece of evidence showing that either Stone or
14 KeyFi misrepresented the transactions that it was engaged
15 in.

16 Moving to the second time period, this is when, on
17 January 11, 2021, after months of negotiations, the parties
18 entered into an Asset Purchase Agreement and Service
19 Agreement where Celsius acquired KeyFi's assets and Stone
20 agreed to, under the Service Agreement, act as the CEO of
21 Celsius-KeyFi.

22 And if we could go to Exhibit 40. So, this is
23 Section 3 of Plaintiff's Exhibit 40. So, the consideration
24 to KeyFi consisted of essentially three forms of payments.
25 First under A, Celsius was to pay KeyFi \$65,000 around

1 closing. That payment occurred. Second, Celsius was
2 supposed to pay KeyFi 350,000 cell tokens, which at the time
3 they were due was worth a little bit less than \$2 million at
4 three different time intervals, at closing, six months later
5 and then a year later. Those payments never happened. And
6 then finally, the earn out payments quoted in Section C.
7 This represents the profit share the parties contemplated
8 since the beginning of their dealings.

9 If we could go to the next slide, please. And
10 this is -- this is the -- this is in the Schedule to the
11 APA, which contemplates how the profit share will be
12 distributed. And under the profit share --

13 THE COURT: I have -- I have -- excuse me, Mr.
14 Roche. I have the exhibit open in front of me. Can you
15 tell me on what page of the exhibit your slide is on?

16 MR. ROCHE: Yes. I thought we had the page
17 numbers on there, so I apologize. I believe it's on either
18 Page 28 or 29.

19 THE COURT: Just give me a second.

20 MR. ROCHE: It's Page 29, Your Honor, at the
21 bottom of the page, Section D.

22 THE COURT: When you're referring --

23 MR. ROCHE: And so, under that --

24 THE COURT: I -- I'm sorry, but I don't see it.
25 Which Schedule is this?

1 MR. ROCHE: So, this is Page 29 of Exhibit 40, and
2 the Asset Purchase Agreement --

3 THE COURT: I -- I don't see it, no. I have
4 Exhibit 40 opened in front of me.

5 MR. ROCHE: It's Schedule 7.8B of the Asset
6 Purchase Agreement.

7 THE COURT: I have that open, as well.

8 MR. ROCHE: So, it's the second page of the Asset
9 Purchase -- it's the second page of Schedule 7.8B.

10 THE COURT: All right. It's on Page 30.

11 MR. ROCHE: Okay. My apologies --

12 THE COURT: Page 30 of 33. It's Paragraph 6D. Go
13 ahead.

14 MR. ROCHE: Under the profit share, payouts were
15 set to occur on the 15th of each month. With the first
16 occurring on December 31, 2020. Meaning that at the time
17 this Agreement was signed, the parties had contemplated that
18 profits were already due.

19 Now, what Celsius would have this Court believe is
20 that despite the fact that they drafted this Agreement and
21 heavily negotiated it for more than five months, they were
22 duped by Stone into believing that KeyFi's activities were
23 highly profitable.

24 For the next two months after this Agreement was
25 executed, Celsius sent an additional \$140 million in

1 customer deposits to Celsius-KeyFi for deployment. During
2 this time, they also authorized Stone to take profit payouts
3 that were owed under the Asset Purchase Agreement in the
4 form of the NFT purchases that are at issue here today.
5 Now, towards the end of February 2021, Stone and others at
6 Celsius learned that the company was illiquid because it had
7 failed to properly account for its assets and liabilities.
8 And shortly after Mr. Stone learned of this, he resigned on
9 March 9th from KeyFi -- as the CEO of Celsius KeyFi.

10 Which leads us to the final time period, from
11 March to June 2021, Stone and the rest of the KeyFi team
12 returned wound down all their positions in DeFi and sent
13 back to Celsius roughly \$1.5 billion, about \$800 million
14 more than what Celsius sent to it. And if we could go to
15 the next slide, please. This is Plaintiff's Exhibit 46. On
16 April 7, 2021, Celsius, for the first time, threatens to
17 hold Mr. Stone personally liable for a phenomenon in DeFi
18 called impermanent loss.

19 On this day, Mr. Hurley writes to Stone's counsel
20 stating, please make no mistake, Celsius and Celsius KeyFi
21 will hold Mr. Stone personally liable for his breaches of
22 contract, including without limitation, with respect to any
23 losses resulting from price increases in ETH." Celsius
24 never did bring a breach of contract claim. Why? Because
25 it realized that under the bargain it struck with KeyFi, it

1 owed KeyFi and eight-figure payment. And to avoid this
2 payment, it set out on a year-long campaign to paint Stone
3 and KeyFi as thieves and to cover up for its own accounting
4 and competence. You can take that down.

5 Now, I want to, very quickly for this Court, cover
6 the concept of impermanent loss because it is, along with
7 the Asset Purchase Agreement, really at the heart of this
8 case. What is it?

9 THE COURT: You ought to wrap up soon because
10 you've used your 15 minutes.

11 MR. ROCHE: Then we'll save that for later, Your
12 Honor. So, I want to briefly just discuss -- for a year
13 after this dispute arose, the parties attempted to resolve
14 the dispute and during this time, Stone and KeyFi moved on
15 to pursuing other projects in the NFT and DeFi space.
16 Including by leveraging their highly -- Stone's highly
17 public Twitter persona that Stone crafted while he was at
18 Celsius. Under this persona, Stone lobbied one particular
19 DeFi protocol called "compound" to airdrop funds into the
20 OXB-1 wallet, a wallet that he shared control with Celsius.
21 As a result of that lobbying, in September 2021, the
22 compound protocol airdropped \$1.4 million worth of a stable
23 coin into that OXB-1 wallet.

24 THE COURT: Now, was that a wallet that belonged
25 to Celsius?

1 MR. ROCHE: That was a wallet that they shared
2 control over.

3 THE COURT: But this was after he resigned, and he
4 withdrew crypto assets from one of Celsius' wallets. Is
5 that correct? He had the key, and he withdrew the funds?

6 MR. ROCHE: They jointly had the keys to those
7 wallets.

8 THE COURT: Okay. Well, jointly? We'll hear
9 about that, but it was a Celsius wallet, he had resigned
10 from Celsius, and he withdrew funds from the Celsius wallet
11 and transferred it to something else?

12 MR. ROCHE: Your Honor, we -- Your Honor, we would
13 submit --

14 THE COURT: Am I correct that he transferred it to
15 something that Stone controlled?

16 MR. ROCHE: He did transfer -- he transferred,
17 along with the NFTs, he transferred the NFTs and the \$1.4
18 million of DAI to himself -- to himself and to KeyFi.

19 THE COURT: Right.

20 MR. ROCHE: But the \$1.4 million that's at issue
21 in that transaction, was not Celsius' property. It was not
22 deposited by Celsius, it did not belong to Celsius customer
23 deposits. Your Honor, I'll just wrap up by briefly
24 addressing the issues that the Court has to decide. In
25 order for Celsius to prevail in its motion, Celsius must

1 show likelihood of merits under its claims, that is likely
2 to suffer irreparable harm in the absence of --

3 THE COURT: Mr. Roche, I know what the standard
4 preliminary injunction is. Okay. You've used your time up.

5 MR. ROCHE: Understood. And I'll just wrap with
6 this, at bottom, as the Court will see from the testimony
7 and evidence presented today, Celsius can't meet its burden
8 for extraordinary relief it's seeking. Celsius will have
9 its opportunity to prove the merits of its case and Defense
10 look forward to the completion of discovery so that it can
11 show this Court and the rest of the parties' interests in
12 this matter the truth. For these reasons, we respectfully
13 ask the Court to deny Celsius' motion for Preliminary
14 Injunction. Thank you.

15 THE COURT: All right. Thank you very much, Mr.
16 Roche. So, Mr. Hurley, before you start -- before you call
17 your first witness, I'm looking at the Amended Joint Pre-
18 Trial Order, the Exhibit list and some of the exhibits as to
19 which Mr. Roche has made objection, and I do want to ask you
20 about that before we get into the evidence. Specifically,
21 Exhibits 9 and 29, which Mr. Roche had objected to on
22 hearsay grounds.

23 So, Exhibit 9 is the declaration of
24 (indiscernible). Exhibit 10 is the declaration of
25 (indiscernible), neither of whom are being called as

1 witnesses. Why shouldn't I sustain the objections to those
2 on grounds of hearsay?

3 MR. HURLEY: Your Honor, we will not offer the
4 declarations themselves into evidence based on our agreement
5 in the last several days.

6 THE COURT: All right, and what about -- really
7 more to the point, exhibits to the (indiscernible)
8 declaration. So, it's Exhibits 11 through 29. They're all
9 exhibits to the (indiscernible) declaration and Mr. Roche
10 has objected on hearsay grounds to all of those.

11 MR. HURLEY: Yeah. I had understood that you guys
12 were withdrawing the objection to the Etherscans.

13 MR. ROCHE: Yeah. Based on the agreement we had
14 relating to the withdrawing of certain declarations where we
15 don't object to the Etherscans on the basis of hearsay.

16 THE COURT: So that I have a clear record, we're
17 talking -- and Mr. Roche, I just want you to confirm this,
18 you're withdrawing your objections to Exhibits 11 through
19 29?

20 MR. ROCHE: I'm just looking at the -- that is --
21 I believe it's 11 through -- I'm -- Your Honor, I believe
22 there are certain transactions that we've -- certain
23 exhibits to the (indiscernible) declaration that we agreed
24 would not be -- come in. I'm just trying to find, and if
25 Mr. Hurley knows, it's the exhibits relating to the lock

1 deed.

2 MR. HURLEY: Right.

3 THE COURT: You need to refer specifically to
4 exhibit numbers.

5 MR. ROCHE: (indiscernible) help me out here.

6 MR. HURLEY: I'm being told it's --

7 MR. ROCHE: It looks like, based on what we've
8 already updated that in the Amended and Joint File Order.
9 So, 3236 had been removed. So, I will withdraw --
10 Defendants withdraw their objection to Exhibits 11 through
11 29.

12 THE COURT: Okay. All right. Give me a second
13 now, again. Let me go further. Mr. Holert is testifying
14 live, is that correct, Mr. Hurley? I'm looking at Exhibit
15 53, which is the declaration of Mr. Holert.

16 MR. HURLEY: That's right, Your Honor. He's
17 testifying live.

18 THE COURT: Okay. What about Exhibit 54? Mr.
19 Roche has objected on relevance.

20 MR. HURLEY: Your Honor, that's a document that
21 we're offering not -- well, that's a document that relates
22 to the request we made on an expedited basis in advance of
23 this hearing for any information that would support this
24 claim of authorization that the Defendants are making, and
25 we want --

1 THE COURT: The objection is sustained.

2 MR. HURLEY: Okay.

3 THE COURT: What about Exhibit 55?

4 MR. HURLEY: That is related to the same category.

5 THE COURT: And that objection is sustained, as
6 well. Exhibit 58, the Standstill Employment Agreement, the
7 objection is sustained. The objection to Exhibit 59, which
8 is the Mashinsky declaration, which he will be testifying,
9 the objection is overruled.

10 MR. HURLEY: Your Honor, may I respond on 58, the
11 Standstill Agreement?

12 THE COURT: Go ahead, briefly.

13 MR. HURLEY: Just, the Defendants have argued that
14 our -- that Celsius' delay is a reason to deny the motion.

15 THE COURT: Let me put this issue right to rest
16 right now. I don't believe the delay is a basis for denying
17 a preliminary injunction. I think it's timely. I'm
18 sustaining the objection. As I say, to Exhibit 58, I just -
19 - let me simplify your arguments made thereon. I find the
20 argument of the Injunction motion is untimely has no merit
21 and I'm overruling that. So, I'm sustaining the objection
22 to 58. I'm overruling the objection to 59. With respect to
23 Exhibit 60, Mr. Holert is testifying, and he'll have -- I'm
24 going to overrule the objection -- the hearsay objection.
25 You can cross-examine him all you want. So, that objection

1 is overruled. I believe that is all of the objections with
2 respect to Plaintiff's exhibits. Let's see. Okay. I think
3 that deals with all of them. Is there anything else?
4 Because I want to rule on the rest of your exhibits that are
5 coming into evidence.

6 MR. HURLEY: So, there was an objection on hearsay
7 grounds to the -- I'm sorry, which number was it, Dean?

8 MR. CHAPMAN: 48.

9 MR. HURLEY: To 48, which is the U.S. Treasury
10 Department Press Release for Tornado Cash and we're not
11 offering for the truth of the matter asserted, Your Honor,
12 just that it exists.

13 THE COURT: It's overruled. (indiscernible)

14 MR. HURLEY: That's it.

15 THE COURT: All right. So, with that, I'm
16 admitting in evidence, other than those that I've sustained
17 an objection of admitting all of the other exhibits that the
18 Plaintiff is offering in evidence. So, why don't you call
19 your first witness?

20 MR. HURLEY: Plaintiff, Celsius calls Alex
21 Mashinsky. And Mr. Mashinsky is outside the courtroom, Your
22 Honor. Counsel is going to bring him in now.

23 MR. ROCHE: Your Honor, just so Your Honor is
24 aware, we've agreed to invoke the rule.

25 THE COURT: Okay. For those who are not tuned

1 into the rule, unless parties consent, anyone who is going
2 to be testifying as a witness is excluded from the courtroom
3 during other proceedings in the case. So, Mr. Mashinsky
4 (indiscernible), I believe will enter the courtroom, he'll
5 come up to the witness stand and he will be sworn.

6 REPORTER: You just stand there. Raise your right
7 hand, please. Do you solemnly swear or affirm that all the
8 testimony you're about to give before this Court is the
9 truth, the whole truth and nothing but the truth?

10 THE WITNESS: I do.

11 THE COURT: Please have a seat, Mr. Mashinsky.
12 Mr. Hurley, go ahead.

13 DIRECT EXAMINATION OF ALEX MASHINSKY

14 BY MR. HURLEY:

15 Q Good morning, Mr. Mashinsky.

16 A Good morning.

17 Q Can you hear me, okay?

18 A Yes.

19 Q And Your Honor, can you hear the witness, okay?

20 THE COURT: I can see and hear the witness very
21 well. Thank you.

22 BY MR. HURLEY:

23 Q Mr. Mashinsky, you're a co-founder of Plaintiff,
24 Celsius Network Limited. Is that right?

25 A I am.

1 Q And the former CEO of Celsius Network Limited?

2 MR. ROCHE: Objection. Leading.

3 THE COURT: Overruled.

4 BY MR. HURLEY:

5 A That's correct.

6 Q Okay. During what period of time did you act as CEO of
7 Celsius Network Limited?

8 A I don't have the exact date, but it was end of 2017
9 through September of 2022.

10 Q You submitted a declaration in connection with Celsius'
11 motion for a Preliminary Injunction in this case, correct?

12 A Yes.

13 MR. HURLEY: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, please. Go ahead.

16 BY MR. HURLEY:

17 Q Mr. Mashinsky, I've handed you a document that's been
18 marked Plaintiff's Exhibit 59. Do you recognize Plaintiff's
19 Exhibit 59 as a copy of your declaration?

20 A I do.

21 Q On Page 1, the declaration states, "I, Alex Mashinsky,
22 declare under penalty of perjury, pursuant to 28 U.S.C.
23 1746, that the following is true and correct." Do you see
24 that?

25 A Yes.

1 Q Please turn to the next page. Do you recognize your
2 signature, sir?

3 A Yes.

4 Q It indicates you signed the document on December 5,
5 2022. Is that accurate?

6 A Yes.

7 Q Do you still declare, as of today, that the contents of
8 PX59 are true and correct?

9 A I do.

10 MR. HURLEY: Your Honor, Plaintiffs offer PX59
11 into evidence.

12 THE COURT: All right. It's admitted into
13 evidence.

14 (Plaintiff's Exhibit 59 is Admitted into Evidence)

15 BY MR. HURLEY:

16 Q Mr. Mashinsky, were you served with a Trial Subpoena
17 requiring your attendance today?

18 A No.

19 Q So, you submitted your declaration and you're appearing
20 here today voluntarily?

21 A I am.

22 Q Mr. Mashinsky, your declaration is quite brief, just
23 two substantive paragraphs, correct?

24 A Yes.

25 Q Would you please read Paragraphs 3 and 4 aloud for the

1 Court?

2 A "I did not authorize Defendants to invest or otherwise
3 deploy Celsius' assets in any activities other than Staking
4 and DeFi. I did not authorize Defendants to purchase non-
5 fungible tokens (NFTs). The Defendants also were not
6 permitted to deploy to any particular proposed Staking ID
7 for platforms other than -- or other investments without
8 first obtaining the consent of Celsius. Item #4, I did not
9 authorize Defendants to use Celsius' assets to purchase NFTs
10 for themselves or otherwise nor did I authorize Defendants
11 to take for themselves any such NFTs or to transfer any
12 coins, NFTs or other property from Celsius wallets to
13 Defendants' wallets for any reason."

14 Q Thank you, Mr. Mashinsky.

15 MR. HURLEY: That's all we have.

16 THE COURT: All right. Mr. Roche, cross-
17 examination.

18 CROSS-EXAMINATION OF ALEX MASHINSKY

19 BY MR. FREEDMAN:

20 Q Good morning, Mr. Mashinsky.

21 A Good morning.

22 Q I'm Vel Freedman, counsel to the Defendants in this
23 action. How are you today?

24 A I'm fine.

25 Q Mr. Mashinsky, we just looked at your declaration. I

1 think it's been admitted into evidence as PX59. Are you
2 still holding it over there?

3 A Yes.

4 Q Celsius' lawyers drafted this declaration for you?

5 A I don't remember. There were several drafts, but I
6 don't remember who came up with this draft.

7 Q Certainly you did not draft it, correct?

8 A I don't recall who drafted what parts of it.

9 Q Well, you just read Paragraphs 3 and 4.

10 A Yes.

11 Q A little bit of trouble getting through it, Mr.
12 Mashinsky. You did not draft Paragraphs 3 and 4, correct?

13 MR. HURLEY: Objection, Your Honor. Asked and
14 answered.

15 THE COURT: Sustained.

16 BY MR. FREEDMAN:

17 Q Mr. Mashinsky, you knew Mr. Stone before he started
18 working with Celsius, correct?

19 A Yes.

20 Q And that's because he worked for a company that you
21 both were at called Battlestar -- sorry, he worked for a
22 company called Battlestar Capital, correct?

23 A Yes.

24 Q And you had invested in that company?

25 A Yes.

1 Q And you were involved in onboarding Jason and KeyFi
2 into Celsius, correct?

3 A I don't know what that means.

4 Q Were you involved in getting KeyFi involved as a
5 partner of Celsius to deploy Celsius Capital?

6 A I was part of a team that -- yes, that created and
7 negotiated the contract for KeyFi.

8 Q And in fact, in the end, you took over total control
9 over finalizing those contracts between Celsius and KeyFi,
10 didn't you?

11 A That's incorrect.

12 MR. HURLEY: Your Honor, objection. This is
13 beyond the scope of the direct, which is quite limited.

14 THE COURT: Overruled. Overruled.

15 MR. FREEDMAN: Your Honor, if I may, we're going
16 to refer you to Defense Exhibit #39. Your Honor, may I
17 approach the witness?

18 THE COURT: Yes, you may.

19 BY MR. FREEDMAN:

20 Q Mr. Mashinsky, do you see what's been marked as DX39 in
21 front of you --

22 A Yes.

23 Q -- in the bottom right corner? And do you recognize
24 this as an email chain between Jeremy (indiscernible) and
25 yourself being cc'd on these emails?

1 A Yes.

2 MR. FREEDMAN: Your Honor, we'd offer DX39 into
3 evidence.

4 THE COURT: Hearing no objection, it's admitted in
5 evidence.

6 BY MR. FREEDMAN:

7 Q Mr. Mashinsky, can you take a look at the bottom of --
8 the bottom email on Tuesday, August 4, 2020, at 8:57 p.m.
9 That's an email from you. Do you see that?

10 A Yes.

11 Q And the subject line of this email, Mr. Mashinsky, at
12 the top, is KeyFi, right?

13 A Yes.

14 Q All right, and in that email, you say, "We have too
15 many cooks in the kitchen on this deal. Let me finish this
16 Agreement. If Jason or anyone approaches you about KeyFi,
17 send them to me." Is that correct?

18 A That's what it says.

19 Q I read that correctly?

20 A Yes.

21 Q "Let me finish this Agreement"?

22 A This is an email to Nuke Goldstein who was not part of
23 the team negotiating the KeyFi Agreement.

24 Q So, you finished the Agreements and took control over
25 the Agreements between Celsius and KeyFi, did you not, Mr.

1 Mashinsky?

2 A I did not.

3 Q Mr. Mashinsky, you signed the Asset Purchase Agreement
4 that's dated effective December 31, 2020. Is that right?

5 A When it was completed, I signed it, yes.

6 Q And I believe that's been admitted into evidence as
7 Plaintiff's Exhibit 40.

8 MR. HURLEY: It is 40, Your Honor.

9 MR. FREEDMAN: You admitted that into evidence
10 already, Judge?

11 THE COURT: I did.

12 MR. FREEDMAN: Okay.

13 BY MR. FREEDMAN:

14 Q Mr. Mashinsky, KeyFi wasn't supposed to work for free
15 under this Agreement, were they?

16 A KeyFi is a corporation, so I'm not sure what you mean
17 by, "KeyFi was supposed to work for free".

18 Q Do corporations not work?

19 A They do.

20 Q Okay, so --

21 A People work.

22 Q -- was KeyFi supposed to work for free, Mr. Mashinsky?

23 A People work.

24 MR. HURLEY: Objection, Your Honor. The document
25 speaks for itself as to its terms.

1 THE COURT: Overruled. Ask your next -- go ahead.

2 MR. FREEDMAN: I'm sorry. I didn't hear if the
3 witness answered the question.

4 BY MR. FREEDMAN:

5 Q Mr. Mashinsky, was KeyFi supposed to work for free?

6 A I don't know what that means.

7 Q Okay. Did you expect that KeyFi would earn anything in
8 return for its services or were they just supposed to be
9 doing you a favor?

10 A KeyFi was intended -- that people working at KeyFi were
11 intended to generate coin and coin returns.

12 Q That wasn't my question, Mr. Mashinsky. My question
13 was very simple, which is, did you expect Celsius to have
14 KeyFi work for it for free or did you expect to end up
15 paying KeyFi some amount of money for their services?

16 A I think the Agreement states clearly how KeyFi members
17 are compensated.

18 Q It's a yes or no question, Mr. Mashinsky. Did you
19 expect to have Celsius pay KeyFi for its services?

20 A I'm not sure I understand the question.

21 Q What don't you understand about the question, Mr.
22 Mashinsky?

23 A I think KeyFi is a majority owned by Celsius or
24 controlled by Celsius, so you're asking me if Celsius was
25 supposed to pay itself.

1 Q Do you understand the distinctions between -- of
2 corporate separateness? Do you understand that there are
3 different corporations, there's KeyFi and there's Celsius?
4 Is that a concept you're familiar with, Mr. Mashinsky?

5 MR. HURLEY: Objection, Your Honor. The question
6 is vague. What's happening is, there's a confusion between
7 Celsius KeyFi and KeyFi --

8 THE COURT: Overruled.

9 BY MR. FREEDMAN:

10 A Can you repeat the question?

11 Q Yeah. Do you understand that there's a difference in
12 concept -- under the law, rather. Do you understand there's
13 corporations, and they are entities?

14 A Yes.

15 Q Okay, and do you understand that KeyFi entered into an
16 Asset Purchase Agreement with Celsius? Do you understand
17 that?

18 A Yes.

19 Q And do you understand that under the Asset Purchase
20 Agreement, Celsius was obligated to pay KeyFi a portion of
21 profits?

22 A I think it's the other way around. KeyFi was supposed
23 to pay Celsius a portion of profits.

24 Q So, KeyFi got to keep all of the profits that it earned
25 and then it would pay Celsius a portion of those profits.

1 Is that accurate?

2 A I think that's how it's written, yes.

3 Q So, you would have no issue with KeyFi keeping some of
4 its own funds that it generated as profit and then returning
5 some portion of that profit back to Celsius, correct?

6 A Upon the approval of the Board of Directors, yes.

7 Q Mr. Mashinsky, when KeyFi executed an Agreement with
8 Celsius, you were eager to get started with KeyFi, correct?

9 A Yes.

10 Q You caused Celsius to send digital assets to KeyFi
11 before there was even a formal agreement in place.

12 A I don't think I caused Celsius to do that.

13 Q Were you the CEO of Celsius?

14 A Yes.

15 Q Were you aware of its negotiations with Mr. Stone?

16 A I was aware of the negotiations, yes.

17 Q Were you aware of the fact that assets were being sent
18 to KeyFi for deployment?

19 A I don't control or monitor all the transactions at
20 Celsius.

21 THE COURT: That wasn't the question, Mr.
22 Mashinsky. Answer the question.

23 BY MR. FREEDMAN:

24 A Can you repeat the question?

25 Q Were you aware that Celsius was sending digital assets

1 to KeyFi for deployment?

2 A I don't know when the first transfer was. I'm aware
3 that, in general, there were transfers. But I don't think I
4 authorized the first transfer of coins to KeyFi.

5 MR. FREEDMAN: Can we have DX34? Judge, Defense
6 Exhibit 34 is an Excel spreadsheet, a very large Excel
7 spreadsheet that I believe is Celsius' general ledger. The
8 parties have agreed, for confidentiality reasons, to redact
9 portions of that general ledger to just the transactions
10 that are relevant to the hearing today. So, we'll need
11 permission, if it's all right, Your Honor, to make Mr. Dan
12 Stone, a lawyer in my office, a co-host so he can share
13 documents.

14 REPORTER: He is a co-host.

15 BY MR. FREEDMAN:

16 Q Mr. Mashinsky, let's see if we can help you remember
17 what assets got sent to KeyFi, when. Do you recognize the
18 document in front of you, Mr. Mashinsky, as Celsius' general
19 ledger?

20 A I don't look at the Celsius general ledger, so I'm not
21 -- I don't think I've ever logged into this document.

22 Q You've never looked at Celsius' general ledger?

23 A Not this document.

24 Q Is there a different general ledger you've looked at or
25 you just never looked at the general ledger of the company

1 you --

2 A I would sporadically look at the coin report and other
3 documents, but I don't think I've looked at this document.

4 Q You understand that Celsius produced this document to
5 us, Mr. Mashinsky, correct?

6 A I don't know. I'm sure they did, yes.

7 Q And do you have a reason to doubt the authenticity of
8 this document that was produced by the company you were the
9 former CEO of?

10 A I'm not doubting its authenticity. You asked me if I
11 looked at this document.

12 Q That's fair.

13 MR. FREEDMAN: Mr. Stone, I actually have to look
14 at this too. Can you zoom in a little bit? Because it's a
15 little tough for me to see. And Judge, without any
16 disrespect to Mr. Dan Stone because the Defendant is Stone
17 and the lawyer is Stone, I'm going to refer to my associate
18 as "Dan".

19 THE COURT: That's fine.

20 MR. FREEDMAN: And there is no relation as far as
21 I'm aware of. Maybe Mr. Stone, you could help me -- oh,
22 there we go. Line 23, perfect.

23 BY MR. FREEDMAN:

24 Q Mr. Mashinsky, do you see Line 23? It's a line item.
25 It says, "August 2020 Net Transfers Celsius to KeyFi." Do

1 you see that?

2 A Yes.

3 Q And then do you see in Column H, the amount there? Can
4 you read it out because actually I can't.

5 MR. HURLEY: Your Honor, actually, we object. We
6 object to the admission of the document into evidence and
7 asking the witness to read it onto the record will have that
8 effect. No foundation has been laid for this document.

9 THE COURT: You dispute it's the general ledger of
10 Celsius?

11 MR. HURLEY: I wouldn't say we're disputing it,
12 but we also don't -- as far as I know, there's no witness
13 that is going to testify as to what this document is. We
14 don't know. It appears this witness doesn't know either.

15 THE COURT: Just give me a second.

16 MR. HURLEY: This document, by the way, Your
17 Honor, is one of the documents that was added to the Exhibit
18 List late. But it is a document we produced on December
19 15th.

20 THE COURT: It's a document that was produced by
21 Celsius to the (indiscernible) the case.

22 MR. HURLEY: It was produced -- well, this version
23 was actually modified as Mr. Stone or, as counsel for Mr.
24 Stone, indicated. But (indiscernible) documents produced by
25 Celsius.

1 THE COURT: (indiscernible) Is this the portion of
2 the Celsius general ledger? Yes or no?

3 MR. HURLEY: Your Honor, I don't know.

4 MR. FREEDMAN: Your Honor, we're happy to use the
5 original document if they don't object to it being placed on
6 the screen. But the Custodian, as listed for this document,
7 is listed as "Celsius". It was produced by Celsius, it has
8 the Bates label of Celsius on top of it. We're obviously at
9 an expedited hearing. Your Honor is the fact finder. I
10 would offer this document into evidence.

11 THE COURT: The objection is overruled. Go on.

12 MR. FREEDMAN: Thank you, Your Honor.

13 BY MR. FREEDMAN:

14 Q Mr. Mashinsky, can you look at Line 23, "August 2020
15 Net Transfers from Celsius to KeyFi", and can you read for
16 me the total amount of net transfers that Celsius sent to
17 KeyFi in August of 2020?

18 A The image here is blocking the header, so I can't
19 really do that.

20 Q You want to scroll up and show the header, Mr. -- you
21 see where it says, "Amount" in Column H?

22 A I don't.

23 MR. FREEDMAN: Dan, can you highlight "Amount" in
24 Column H for Mr. Mashinsky?

25 BY MR. FREEDMAN:

1 A Can you just make the image -- because I don't see
2 Column H on it, so -- I see the image of the Judge and --

3 Q Oh, oh, oh, oh. I understand.

4 A Okay. Now I can see it. Thank you.

5 Q All right. Can you read -- can you read that amount of
6 net transfers in August for me?

7 A Line 23 reads, \$21,987, -- can you move the cursor
8 because I can't see the -- 201.94.

9 Q Mr. Mashinsky, you understand that the Asset Purchase
10 Agreement was not yet signed in August of 2020, correct?

11 A I don't remember when it was signed.

12 MR. FREEDMAN: Your Honor, I'm referring back to
13 Exhibit 40, which has been admitted into evidence.

14 BY MR. FREEDMAN:

15 Q Do you have a copy -- oh, Mr. Mashinsky, do you have a
16 copy of Exhibit 40, that's the Asset Purchase Agreement?
17 It'll be the thick packet of documents.

18 A I don't have it.

19 REPORTER: My apologies to interrupt. We're
20 getting feedback in the courtroom. If someone is -- is
21 there anyone unmuted that's -- if you shuffle papers, that
22 might be why.

23 THE COURT: Let's go on, Deanna. I can hear
24 clearly.

25 REPORTER: Okay. Thank you.

1 MR. FREEDMAN: Your Honor, may I approach?

2 THE COURT: Yes, go ahead.

3 BY MR. FREEDMAN:

4 Q Mr. Mashinsky, you're holding what's been admitted into
5 evidence as PX40, Exhibit 40 and it is a copy of the Asset
6 Purchase Agreement. Can you take a look for me on Page 2 of
7 that Exhibit, but it's actually the first page of the Asset
8 Purchase Agreement. And do you see that first line? "This
9 Asset Purchase Agreement is effective as of December 31,
10 2020"?

11 A Yes.

12 Q Does that refresh your recollection that in August of
13 2020 when you sent \$20 million over to KeyFi, this Agreement
14 was not yet in place?

15 A I did not send \$20 million.

16 Q Mr. Mashinsky, let's look at what you did next. In
17 September of 2020, Celsius sent over, is that \$54 million,
18 over to KeyFi?

19 A If that's what is says, then yes.

20 Q And then, Mr. Mashinsky, you went from \$20 million to
21 \$54 million, and then in October of 2020, Celsius sent \$81
22 million in customer assets over to KeyFi for deployment. Is
23 that correct?

24 MR. HURLEY: Objection. Lack of foundation, Your
25 Honor.

1 MR. FREEDMAN: Your Honor, we're reading from a
2 document that's in evidence.

3 THE COURT: Overruled. Go on.

4 BY MR. FREEDMAN:

5 A Well, I don't understand. What's the question?

6 Q The question is, do you see it saying there that in
7 October of 2020, Celsius sent KeyFi \$81.5 million in
8 customer deposits for deployment?

9 A That's what it says here. I would just remark that at
10 the time when this was sent, I think the value was a
11 fraction of these numbers. These numbers represent the
12 dollar value maybe today or whenever this was prepared, but
13 it does not represent the dollar value --

14 MR. HURLEY: Your Honor, we object to the
15 narration and move to strike. It's non-responsive. It's
16 also -- the witness a second ago said he's never seen this
17 document.

18 MR. FREEDMAN: Your Honor, the question literally
19 was about the value being transferred --

20 THE COURT: All right, stop. Stop. I do not
21 permit speaking objections or (indiscernible) between
22 counsel. You can ask your questions of the witness. He's
23 not seen this document. Do not argue with the witness. You
24 cannot force him to answer a question about what this
25 document means when he had a decision to make. The document

1 is in evidence. Go on with your next question.

2 BY MR. FREEDMAN:

3 Q Mr. Mashinsky, do you see on Line 26, it says that in
4 November of 2020, Celsius sent \$107 million to KeyFi?

5 A Again, I think these values are as of today and not as
6 of the time it was sent.

7 MR. FREEDMAN: Your Honor, I'm going to refer you
8 to DX09, it's Defense Exhibit 9. May I approach the
9 witness? Your Honor, may I hand the witness a copy of the
10 exhibit?

11 THE COURT: Yes (indiscernible). Apparently,
12 there's an objection (indiscernible). The objection is
13 overruled. Go ahead.

14 MR. FREEDMAN: Thank you, Your Honor.

15 BY MR. FREEDMAN:

16 Q Mr. Mashinsky, you're doubting the value of the assets
17 at the time they were sent. You are now looking at DX09,
18 which appears to be an email from you to Jason Stone with a
19 cc: to Harumi Thompson, who was the CFO of Celsius, as well
20 as Nuke Goldstein. Do you see that? Am I correct?

21 A Yes.

22 MR. FREEDMAN: Your Honor, we'd offer DX09 into
23 evidence.

24 MR. HURLEY: I have no objection, Your Honor.

25 BY MR. FREEDMAN:

1 Q Mr. Mashinsky, do you see on September 2, 2020, so
2 contemporaneously, this is an email from Mr. Stone. It
3 says, "Harumi, this is a formal request for immediate
4 increased deployment allocation today per our discussions,
5 \$20 million would be immediately (indiscernible)." Do you
6 see that?

7 A Yes.

8 Q So, these were the values of the assets at the time
9 that they were sent, isn't it Mr. Mashinsky?

10 THE COURT: You can't testify -- I'm sorry, but
11 your comment is inappropriate. You can't -- the document
12 says what it says. You can't interpret it for the record.
13 The comment is so stricken.

14 MR. FREEDMAN: I'm sorry, Judge. It's -- I
15 understood that you were telling me not to ask the question
16 about --

17 THE COURT: The Exhibit is already in evidence.
18 It says what it says, but you can't testify and interpret
19 it.

20 MR. FREEDMAN: Your Honor, I was asking -- I was
21 asking --

22 THE COURT: (indiscernible) Stop. You can read
23 the document, you can ask a question, but you can't testify
24 about it.

25 BY MR. FREEDMAN:

1 Q Mr. Mashinsky, does this help you -- does this change
2 your opinion on the value of the -- does this change your
3 opinion on what the value of the assets reflected in the
4 general ledger -- strike that. Does this change your
5 opinion that the value of the assets reflected in the
6 general ledger are the value on the date of transfer as
7 opposed to the value today?

8 A It does not. Celsius did not lend KeyFi dollars.
9 Celsius lent KeyFi Ethereum.

10 Q Mr. Mashinsky, do you deny that between August and
11 December of 2020, Celsius sent KeyFi a significant amount of
12 digital assets?

13 A Digital assets. I agree, yes.

14 Q Mr. Mashinsky, you would not have allowed Celsius to
15 send those assets to KeyFi if you did not believe that KeyFi
16 was going to be profitable, correct?

17 A KeyFi was supposed to generate a profit, yes.

18 Q And in fact, month after month, more and more digital
19 assets were sent to KeyFi. You only did that because you
20 believed KeyFi was actually profitable, correct?

21 A I believed that the deployment into the protocols were
22 profitable, yes.

23 Q Mr. Mashinsky, isn't it true that Celsius sent so many
24 digital assets to KeyFi that in early February 2021, KeyFi
25 eventually had over \$1.4 billion worth of customer deposits

1 in its possession?

2 A Celsius sent the same number of coins that -- the coin
3 value in this document is from September. In September,
4 from my recollection, Ethereum was at less than \$500 and
5 then the date you're talking about, Ethereum was close to
6 \$4,000. So, the increase in value you're talking about is a
7 dollar increase in value. There was no substantial increase
8 in coin count.

9 Q Mr. Mashinsky, I asked a very simple question. Isn't
10 it true that Celsius sent so many digital assets to KeyFi
11 that in February of 2021, KeyFi was in possession of over
12 \$1.4 billion worth of digital assets that belonged to
13 Celsius?

14 A I don't remember the total value, but in my -- when I
15 recall these things, I think about in coin terms, not in
16 dollar terms because the point was returning those coins to
17 Celsius or its customers. That's what we focused on.

18 MR. FREEDMAN: Your Honor, can I refer you to
19 DX40?

20 THE COURT: Okay.

21 MR. FREEDMAN: May I approach the witness, Your
22 Honor.

23 THE COURT: Yes, go ahead.

24 MR. FREEDMAN: I'm sorry, Judge. You broke up on
25 that.

1 THE COURT: Yes, go ahead.

2 MR. FREEDMAN: Thank you.

3 BY MR. FREEDMAN:

4 Q Mr. Mashinsky, you'll see here this is an email chain
5 between various folks at Celsius Network including Nuke
6 Goldstein and yourself. If you turn to the second page,
7 you'll see an email from you on February 13, 2021,
8 discussing the assets in KeyFi. Do you see that?

9 A Yes.

10 MR. FREEDMAN: Your Honor, we'd offer DX40 into
11 evidence.

12 MR. HURLEY: No objection.

13 THE COURT: It's admitted as evidence.

14 (Defendant's Exhibit 40 is Admitted into Evidence)

15 MR. FREEDMAN: Your Honor -- sorry --

16 BY MR. FREEDMAN:

17 Q Mr. Mashinsky, on February 13, 2021, at 1:43 p.m., you
18 said, and I quote, "The wallet now shows \$1.4 billion in
19 assets and \$600 million in borrowed funds." Do you see
20 that?

21 A Yes.

22 Q Okay. Does that help refresh your recollection that in
23 February of 2021, Celsius had sent so many digital assets to
24 KeyFi that KeyFi was now in possession of \$1.4 billion worth
25 of assets?

1 A Celsius sent coins. Their value increased to this.

2 This may be the dollar value, but I don't think that Celsius
3 sent more and more coins. I think their value has
4 increased.

5 Q And Mr. Mashinsky, my question was simply, had you sent
6 sufficient digital assets to KeyFi, that those assets were
7 now worth \$1.4 billion? Yes?

8 A I assumed that on February 13th, the wallet was worth -
9 - was in dollars, worth \$1.4 billion.

10 Q And Celsius would not have sent those digital assets to
11 KeyFi unless it thought KeyFi was deploying those assets and
12 earning a profit, correct?

13 A Again, during that period of time, Ethereum price
14 increased dramatically. It was not -- we didn't control not
15 the dollar value or the return on the protocol. So, saying
16 that we assumed that it was profitable is just incorrect.

17 Q Mr. Mashinsky, a moment ago, you testified -- do you
18 recall a moment ago testifying that you think about these in
19 coin value, not cash value?

20 A Yes.

21 MR. FREEDMAN: Your Honor, can I refer you to
22 DX12? Judge, you've disappeared from our screen. That
23 might be the digital background, or we lost the judge?

24 REPORTER: Judge? Oh, there you are.

25 MR. FREEDMAN: My big screen here, Judge, is

1 showing me that you're on mute.

2 THE COURT: I apologize. Deanna, I had been muted
3 and then I had difficulty unmuting and I've got two
4 computers (indiscernible) that has the camera that's showing
5 me. I'm leaning over it, so that's going to happen again.
6 Go ahead.

7 MR. FREEDMAN: Your Honor, may I approach the
8 witness with DX12?

9 THE COURT: Yes, please.

10 BY MR. FREEDMAN:

11 Q Mr. Mashinsky, do you recognize DX12 as an email chain
12 between yourself, Ms. Thompson, the CFO of Celsius and Jason
13 Stone, talking about deployment of Link, the digital asset,
14 Link?

15 A I see the document. I don't really remember it, but
16 (indiscernible) I'm sure I sent it.

17 MR. HURLEY: Your Honor, we --

18 THE COURT: Let me interrupt you a minute. I
19 should have done this earlier, but just bear with me a
20 second. All right. Referring now to Defendants' Exhibits 1
21 through 33, Exhibit 9, there was a hearsay objection. It's
22 overruled. Exhibit 11, there was a hearsay objection. It's
23 overruled. Exhibit 12, a hearsay objection. It's
24 overruled. Exhibit 13, a hearsay objection. It's
25 overruled. Exhibit 14, a hearsay objection. It's

1 overruled. Exhibit 16, a hearsay objection. It's
2 overruled. Exhibit 18, a hearsay objection. It's
3 overruled. So, Exhibits 1 through 24 -- 1 through 23,
4 excuse me, are all admitted into evidence.

5 (Defendant's Exhibits 1 - 33 are Admitted into Evidence)

6 With respect to the objection to Exhibits 24
7 through 31, I have your objection and I'm reserving ruling
8 as to those. As to Exhibit 32, a hearsay objection. It's
9 sustained. As to Exhibit 33, DX Exhibit 33, the objection
10 is overruled, but the document is admitted, not for the
11 truth of the matter asserted.

12 So, with respect to the objections for 24 through
13 30, those are reserved. I'll have to hear argument and try
14 to use those. As to Exhibit 31, the Stone Affidavit, that
15 is overruled. So, 31 is overruled, 32 is sustained, 33, as
16 I said, is overruled, but admitted not for the truth. But
17 go ahead. I'm sorry to interrupt. I should have done that
18 before you started. But --

19 MR. FREEDMAN: No problem, Judge. It's your
20 courtroom. You could interrupt me whenever you want.

21 BY MR. FREEDMAN:

22 Q Mr. Mashinsky, before we handled the (indiscernible)
23 issues we just did, I asked you if you recalled your
24 testimony that you think about these tokens in coin value.
25 So, just to refresh our memory of where we are, can you take

1 a look for me -- now this document has been admitted into
2 evidence, so you see on September 9, 2020, Mr. Stone sends
3 an email -- excuse me, to you and Ms. Thompson saying --
4 with a screenshot. It's got \$17.1 million portfolio
5 balance, \$129,000 worth of weekly growth and then it says,
6 "Vaults overview, A Link .76 percent growth." Do you see
7 that?

8 A Yes.

9 Q And then, Ms. Thompson responds back to this
10 screenshot. She says, "You are going to have to tell me
11 what it means to the book, please. Thank you." Do you see
12 that?

13 A Yes.

14 Q And then you respond on top of that, "Have Jason give
15 you access to Zapper. Remember --", I'm on the second
16 paragraph -- "Remember, none of these gains are real until
17 you sell the rewards into stable coins. We need to do daily
18 sales of all gains on DeFi." So, the number Jason reports
19 to finance should always be the amount monetized into USDC,
20 that's U.S. Dollar Coin, stable coin issued by Circle,
21 correct, Mr. Mashinsky?

22 A Yes.

23 Q And USDT, which is a tether of stable coin issued by
24 Ifinex, right?

25 A Yes.

1 Q Mr. Mashinsky, you attended weekly meetings to discuss
2 -- with KeyFi to discuss deployment strategies into DeFi,
3 right?

4 A I attended some meetings, yes.

5 Q So, you were generally aware of KeyFi's activities like
6 we've seen in this email?

7 A I attended some meetings.

8 Q And you knew Jason had generated a profit? Jason Stone
9 had generated a profit, didn't you?

10 A Some documents I was shown. It looked like Jason
11 generated a profit.

12 Q In fact, you expressly admitted that Jason made gains
13 on the Celsius assets that it had sent to him, correct?

14 MR. HURLEY: Objection, Your Honor. Vague as to
15 time.

16 THE COURT: Overruled. That's cross-examination.
17 You can answer the question.

18 BY MR. FREEDMAN:

19 A Can you repeat the question? Sorry.

20 Q Yeah, in fact you expressly admitted --

21 MR. FREEDMAN: And sorry, Your Honor, before I
22 read the question, just so I understand your ruling, you
23 said you don't permit speaking objections. So, would you
24 just prefer counsel to say, "Objection"?

25 THE COURT: I overruled the objection. Just ask

1 your next question. Go ahead.

2 BY MR. FREEDMAN:

3 Q Mr. Mashinsky, you expressly admitted that Mr. Stone
4 made gains on the funds Celsius sent him, correct?

5 A I stated that where? Oh, I'm sorry.

6 Q I'm asking, did you state that?

7 A I don't recall saying that.

8 MR. FREEDMAN: Your Honor, I'm looking at DX41.

9 When you have a minute, can you let me know if I can
10 approach the witness?

11 THE COURT: Go ahead.

12 MR. FREEDMAN: I'm sorry, Judge. I don't have the
13 chart in front of me. It's not in evidence.

14 BY MR. FREEDMAN:

15 Q Mr. Mashinsky, do you see this as an email chain
16 between you and folks at Celsius Network, discussing Jason
17 Stone on January 18, 2021?

18 A Yes.

19 MR. FREEDMAN: Your Honor, we'd offer DX41 into
20 evidence.

21 MR. HURLEY: No objection.

22 THE COURT: In evidence. Go ahead.

23 BY MR. FREEDMAN:

24 Q Mr. Mashinsky, do you see on January 18, 2021, you sent
25 an email saying, "Harumi and I spoke to Jason today. We

1 have explained we have three priorities. I'd like to direct
2 you to Priority #3, to do a coin audit to make sure all
3 client assets are returned and book the gains Jason
4 created." Do you see that?

5 MR. HURLEY: Objection

6 THE COURT: Overruled.

7 BY MR. FREEDMAN:

8 Q Do you see that Mr. Mashinsky?

9 A Yes.

10 Q Thank you.

11 A I see it. I don't know what it means.

12 Q I'm sorry. There's no question pending, Mr. Mashinsky.

13 A Okay. All right.

14 Q In fact, Mr. Mashinsky, you were so sure that Jason
15 Stone had created profit for Celsius that you pressured
16 Connor Nolan to work with him, didn't you?

17 A I did not.

18 Q You understand that Mr. Nolan has testified that you
19 did?

20 A I don't recall pressuring anyone to do anything, so --

21 Q Is Mr. Nolan a liar?

22 A I did not -- again, what's the question? I don't
23 understand.

24 Q Is Mr. Nolan a liar?

25 A No.

1 Q He's -- so you would believe him if that's what he
2 said?

3 A Yes.

4 Q And Mr. Mashinsky, you understand that KeyFi was so
5 profitable that you would often direct Celsius employees to
6 deploy more assets with KeyFi, didn't you?

7 A I don't think I directed -- we have a whole team. They
8 do the deployments as risk involved, so I -- I rarely
9 intervened in the deployment of assets.

10 Q Did you often direct Celsius employees to deploy more
11 assets with KeyFi?

12 A No.

13 Q You understand Mr. Nolan has testified that you did?

14 A I did not direct Celsius employees to deploy assets to
15 KeyFi.

16 Q So, Mr. Nolan is not a truth-teller?

17 A I don't know what he testified, so I can't comment to
18 that.

19 Q You understand, Mr. Mashinsky, that you told Celsius
20 employees that KeyFi was profitable and at the forefront of
21 DeFi. Is that true?

22 A I don't recall saying that.

23 Q You understand Mr. Nolan has testified that you did?

24 A I did not see all of Mr. Nolan's testimony.

25 Q I'll represent to you that he said that. Is he a

1 truth-teller?

2 MR. HURLEY: Objection, Your Honor. Asked and
3 answered.

4 THE COURT: Sustained.

5 BY MR. FREEDMAN:

6 Q Mr. Mashinsky, you praised Jason Stone during the
7 relationship between KeyFi and Celsius, did you not?

8 A At what time?

9 Q At any time, Mr. Mashinsky?

10 A I'm sure in the beginning I probably said some things
11 like that about Jason Stone.

12 Q Things like what? I'm sorry.

13 A Praised Jason Stone.

14 Q Isn't it true, Mr. Mashinsky, that you didn't think
15 KeyFi was just profitable, you actually thought that and
16 told Celsius personnel, that KeyFi was Celsius' most
17 profitable trading strategy?

18 A I don't recall saying that.

19 Q You're not denying it here today under oath, are you?

20 A I don't recall saying that.

21 Q Mr. Mashinsky, did you ever monitor KeyFi's block chain
22 activity through its OXB-1 address?

23 A At some point, yes.

24 Q You understand that the Ethereum block chain is
25 publicly visible, right?

1 A Yes.

2 Q And that purchase transactions from a specific address
3 are easily tracked?

4 A KeyFi was involved in tens of thousands of trades, so
5 you can't just look at the block chain. You can't just look
6 at Ethereum and get an answer because the assets were
7 deployed in complex third-party pools. So, the answer is
8 no, you cannot ascertain almost anything by just looking at
9 the Ethereum block chain.

10 Q I'm actually talking about purchases of NFTs, so that's
11 a good critique, Mr. Mashinsky. Purchase of NFTs are pretty
12 easy to track, right?

13 A No, they're not.

14 Q Are you familiar with Etherscan, Mr. Mashinsky?

15 A Yes.

16 Q And are you familiar with what an ERC721 token is?

17 A I'm vaguely familiar, yes.

18 Q It's an NFT, right? It's a technical term for an NFT?

19 A There are several formats for NFTs.

20 Q And to track an ERC721 NFT token, isn't it true, Mr.
21 Mashinsky, that Etherscan has a literal button you can press
22 to view all NFT purchases?

23 MR. HURLEY: Objection.

24 BY MR. FREEDMAN:

25 A I don't think the team was using Etherscan. I think,

1 as per this email, the team was using Zapper and DeBank and
2 both of those did not have at the time -- did not have a tab
3 called "NFTs".

4 Q Mr. Mashinsky, you ran one of the largest and most
5 sophisticated cryptocurrency-based finance platforms in the
6 world, right?

7 A Yes.

8 Q You're telling me that your team didn't even know how
9 to use Etherscan to track an address?

10 A At the time. Etherscan did not have --

11 Q They did not know how to use Etherscan?

12 A -- a tab called NFTs.

13 Q No, it doesn't have a tab called NFTs today either, but
14 it does have one called "ERC721", which came into --

15 A Or ERC721.

16 Q Mr. Mashinsky, please let me finish the question.

17 THE COURT: Stop, stop, stop. One at a time. All
18 right. Mr. Freedman, you can't testify, you can ask
19 questions. All right, and the witness will answer the
20 questions. Ask your next question.

21 BY MR. FREEDMAN:

22 Q Mr. Mashinsky, isn't it true that Etherscan has had a
23 tab for ERC721 token transfer transactions since 2018?

24 A Not that I know of.

25 Q Have you ever looked at the Etherscan address --

1 rather, have you ever pulled up OXB-1 address under
2 Etherscan?

3 A No. I use a different tool.

4 Q You've never looked at it through Etherscan?

5 A I don't think so.

6 MR. FREEDMAN: Your Honor, if I could have one
7 minute.

8 BY MR. FREEDMAN:

9 Q Mr. Mashinsky, are aware that the first time the OXB-1
10 wallet has purchased an ERC721 NFT token was on January 5,
11 2021?

12 A I'm not.

13 Q Are you aware that after that, the next purchase of
14 NFTs from OXB-1 was not until January 28, 2021?

15 A I'm not.

16 Q I'll represent to you that that is, in fact, the case
17 and that is --

18 THE COURT: No, stop. You can't testify. You've
19 got a document that you want to put in front of the witness
20 and question him about? I'm not going to permit you to
21 testify. You've got to stipulate it as fact or document
22 admitted in evidence. You can show it to the witness.

23 BY MR. FREEDMAN:

24 Q Mr. Mashinsky, would you understand how to read
25 Etherscan if I showed you Etherscan printouts?

1 A I vaguely know how Etherscan works, yes.

2 MR. FREEDMAN: Your Honor, would you object to us
3 showing the witness Etherscan printouts?

4 THE COURT: Has it been marked as an exhibit?

5 MR. FREEDMAN: It's been marked as an exhibit. I
6 think DX37, but it's not been admitted into evidence yet.

7 THE COURT: You can put a document in front of the
8 witness (indiscernible), but the document is not in evidence
9 (indiscernible) the document.

10 MR. FREEDMAN: Thank you, Judge.

11 BY MR. FREEDMAN:

12 Q Mr. Mashinsky, do you recognize DX37 as an Etherscan
13 printout?

14 A This is a different format than what I see on my screen
15 when I use Etherscan. So, I'm not sure what this format it.

16 Q Well, I mean, it's a printout of the webpage so --

17 A Again, this is not what Etherscan shows on the screen.

18 THE COURT: You can ask your question. No, stop a
19 second. You can ask your question, but you can't testify.
20 Okay? Ask him if he knows what it is. I think you already
21 asked that. But another about the document.

22 MR. FREEDMAN: Understood, Your Honor. Sorry.

23 BY MR. FREEDMAN:

24 Q Mr. Mashinsky, do you see -- do you see, about a third
25 of the way down, there's a tab for "Transactions, Internal

1 Transactions, ERC20 Token Transactions, ERC721

2 Transactions"?

3 A Yes.

4 Q And if you flip with me to Page -- the third page,
5 you'll see where ERC721 transactions are highlighted.

6 A It shows an empty page.

7 Q Right. I know, because you're going to have to, again,
8 printout of Etherscan, so it doesn't look the same as on a
9 computer, it's a printout. But if you then take a look on -
10 - I'm about -- I'm sorry there's no page numbers here. 1-2-
11 3-4-5, I'm six pages in. At the top it says, "Non-fungible
12 token transfers, ERC721." Do you see that?

13 THE COURT: Don't (indiscernible). Point him to
14 the page, ask him if he understands what the information
15 contained in there is and we'll go from there. He said he's
16 not sure what it is. You haven't laid a foundation for this
17 document.

18 MR. FREEDMAN: Understood, Your Honor.

19 BY MR. FREEDMAN:

20 Q Mr. Mashinsky, you said you ran one of the most
21 profitable and sophisticated --

22 THE COURT: Ask your next question, Mr. Freedman.

23 BY MR. FREEDMAN:

24 Q Do you recognize this as an Etherscan printout of non-
25 fungible token transfers?

1 A I'm sorry. I see here on the title, "ERC20, ERC721,
2 ERC115", so I'm not sure -- it doesn't -- it's not
3 corresponding with the titles of the first page. So, I'm
4 not sure what you're referring to.

5 Q You can put that aside. Thank you, Mr. Mashinsky. Mr.
6 Mashinsky, by January 18, 2021, KeyFi had deployed hundreds
7 of millions of dollars' worth of digital assets that
8 belonged to KeyFi -- Celsius, correct?

9 A Yes.

10 Q And by your admission, had made gains on those assets,
11 correct?

12 A I never said that.

13 Q And was therefore owed a profit share under the Asset
14 Purchase Agreement, right?

15 A No.

16 Q At this time, Mr. Mashinsky, on January 18th, is it
17 true that KeyFi had not been paid anything yet?

18 A That's not true.

19 Q They had not been paid any profit share yet. Is that
20 correct?

21 A I don't know what they were paid as far as profit
22 share.

23 Q So, did you authorize payment of profit shares?

24 A No.

25 Q So, why do you think that they were paid profit share,

1 Mr. Mashinsky?

2 A You asked a different question and answered it
3 differently, so --

4 Q Okay, so by January 18, 2021, had KeyFi been paid any
5 profit share by Celsius?

6 A Not that I know of. No.

7 Q You understand, Mr. Mashinsky, that Jason Stone has
8 testified that you gave him permission to purchase these
9 NFTs as an advance on his profit share?

10 A I never gave such permission.

11 Q But do you understand that's Mr. Stone's position?

12 A I did not see Mr. Stone's testimony.

13 Q It is your contention -- do you understand that Mr.
14 Stone purchased NFTs?

15 A I'm sorry?

16 Q Do you understand that Mr. Stone purchased NFTs?

17 A In the ZRCB1, there were purchases of NFTs and they
18 were not authorized.

19 Q So, it's your position that he stole those assets?

20 A He transacted without authority, knowing that he had to
21 only transact on protocols approved by the Celsius
22 Management Team.

23 Q Do you understand that anyone with an internet browser
24 could have seen those purchases of NFTs, right?

25 A If you knew where to go and what tab to press and how

1 many pages down to go to, then maybe you could have seen it.

2 But the tools we use, "we", meaning Celsius, did not in any
3 easy way display any purchases of NFTs.

4 Q Mr. Mashinsky, you're aware that KeyFi had a very
5 active Twitter account called Ofb1, right?

6 A Yes.

7 Q And you knew about that Twitter account on January 23,
8 2021, correct?

9 A I don't recall when I knew about it.

10 MR. FREEDMAN: Your Honor, can I point you to
11 DX23, which I believe is in evidence. Your Honor, may I
12 approach the witness with a copy?

13 THE COURT: Fine.

14 BY MR. FREEDMAN:

15 Q Mr. Mashinsky, do you have a copy of Exhibit 23?

16 A Yes.

17 MR. FREEDMAN: Judge, you'll let me know when
18 you're ready?

19 THE COURT: I'm ready. Go ahead. I've got it
20 opened.

21 BY MR. FREEDMAN:

22 Q Mr. Mashinsky, you recognize this as an email from you
23 to Jason Stone dated January 23, 2021?

24 A Yes.

25 Q And the subject is, "Why Crypto Twitter's latest

1 anonymous sensation is so into DeFi." Do you see that?

2 It's in the subject. It's the second line up from the

3 bottom -- top, rather. Down from the top, sorry.

4 A I'm responding to something, so you don't have the full
5 back and forth here. So, I guess this is just my response.

6 Q Mr. Mashinsky, I just asked you if you see the subject
7 line which says, "Why Crypto Twitter's latest anonymous
8 sensation --". Do you see that?

9 A Yes, I do. Yes.

10 Q And in it, you say, "Jason, I specifically asked you to
11 take this down and stop posting on Twitter." Do you see
12 this?

13 A Yes.

14 Q Does this help refresh your recollection that, in fact,
15 you knew about OXB-1 Twitter account as of January 23, 2021?

16 A I assume so, yes.

17 Q Okay. Mr. Mashinsky, are you aware that after you
18 admonished him about using this Twitter account, Mr. Stone
19 continued to use that Twitter account?

20 A Yes.

21 Q And in fact, are you aware that OXB-1 Twitter account
22 was a fairly popular Twitter account?

23 A I'm not familiar if it was popular or not.

24 Q Are you aware that the OXB-1 Twitter account frequently
25 tweeted about the NFTs that you allege Jason was stealing?

1 A I don't have that knowledge.

2 Q Did you ever look over a Tweet talking about NFT
3 purchases, Mr. Mashinsky?

4 A I don't recall that.

5 Q Are you aware that he was actually tweeting about NFTs
6 the very day you emailed him to stop talking about it on
7 Twitter?

8 A I -- again, I don't -- I'm not aware of that.

9 Q Is it fair to say that the day you told him to stop
10 posting on Twitter, you were on that Twitter account?

11 A I think this header is article from the block, so I was
12 looking at the Tweet -- I assume I was looking at the Tweet
13 that was posted in the article and not on Twitter itself.

14 Q So, you have no recollection of every going on the OXB-
15 1 Twitter account?

16 A I am sure I -- it's in my feed, so I'm sure I -- I see
17 it once in a while, but that's -- that has nothing to do
18 with me knowing or not knowing what NFTs Jason owns or
19 bought or transacted with.

20 Q So, you follow OXB-1?

21 A I don't know if I follow it now, but at some point, I
22 followed OXB-1.

23 MR. FREEDMAN: Can I see DX35? Your Honor, I'd
24 point you to DX35 that is not in evidence. And may I
25 approach the witness?

1 THE COURT: Yes.

2 BY MR. FREEDMAN:

3 Q Mr. Mashinsky, are you familiar with what a cryptopunk
4 is?

5 A It's an NFT, yes.

6 Q Do you recognize this as a printout of Twitter, a
7 popular social networking website?

8 A It looks like it, yes.

9 Q And do you see, about maybe a third of the way down the
10 page or a quarter way down the page, (indiscernible) with
11 OXB-1 and the little blue Twitter checkmark? Do you see
12 that?

13 A It's not in color, so I don't see colors here.

14 Q That's a fair criticism, Mr. Mashinsky. But I'm
15 bearing my own biases of blue into it. Do you see the
16 checkmark next to OXB-1?

17 A Yes.

18 Q And can you read that Tweet there that's in response to
19 the Tweet about cryptopunks and let me --

20 THE COURT: No, he can't. No, he can't because
21 the document is not in evidence.

22 MR. FREEDMAN: Sorry, Judge. I was going to say,
23 "to yourself".

24 THE COURT: He can read it to himself if you've
25 got a question.

1 MR. FREEDMAN: Judge, sorry. You jumped in. I
2 was going to ask him if he could read it to himself and let
3 us know if he recognizes it.

4 THE COURT: All right. Go ahead. Read it to
5 yourself.

6 BY MR. FREEDMAN:

7 Q And Mr. Mashinsky, please look at the date on the
8 bottom, January 23rd.

9 A Yes.

10 THE COURT: So what is the yes. Have you seen
11 this before?

12 THE WITNESS: I'm sorry. Is that a question to
13 me?

14 THE COURT: Yes, it is. Mr. Mashinsky, have you
15 seen the DX35 before?

16 THE WITNESS: No, I don't think I did.

17 MR. FREEDMAN: Can we get the DX36. Your Honor,
18 can I point you to DX36?

19 THE COURT: Sure, go ahead.

20 MR. FREEDMAN: Your Honor, may I approach?

21 THE COURT: Go ahead.

22 BY MR. FREEDMAN:

23 Q Mr. Mashinsky, without reading anything into the
24 record, can you take a look at -- do you see about halfway
25 down the OXB-1 Twitter account making a post?

1 A Yes.

2 Q Under a CryptoPunk's post. Have you seen this tweet
3 before?

4 A I don't think so.

5 Q Can you be sure?

6 A I cannot be sure. I mean again there's millions of
7 tweets. So, you know, this may be my Twitter feed but I
8 don't think -- I'm not an NFT aficionado. I don't collect
9 NFTs, so I definitely did not read about NFTs.

10 Q Can I get DX30?

11 MR. FREEDMAN: Judge, also not in evidence yet,
12 DX30. May I approach the witness?

13 THE COURT: Yes.

14 BY MR. FREEDMAN:

15 Q Right at the top of this page, Mr. Mashinsky, you'll
16 see a -- again, please don't read into the record until the
17 Judge rules, but you'll see the OXB-1 making a tweet about
18 NFTs. Have you have you seen this tweet before?

19 A No.

20 Q Mr. Mashinsky, you do understand that your wife ended
21 up with two of the NFTs that KeyFi purchased, correct?

22 A I'm not sure KeyFi purchased them or they were
23 airdropped or I don't know what the origin of those NFTs is.

24 Q You understand that you paid your wife with two NFTs?

25 A Celsius paid my wife for her work with two NFTs, yes.

1 Q Did she steal those NFTs?

2 A I'm sorry?

3 Q Did she steal those NFTs?

4 A No. She was paid for her work.

5 Q By KeyFi?

6 A I don't know what that question is means.

7 Q That's because you gave your wife permission to keep
8 those NFTs; isn't that right?

9 A I did not give her permission to keep them. I asked
10 Celsius to pay her for finding thousands of NFTs that Jason
11 bought and took out of the Celsius account.

12 Q And in return you had Celsius pay her in NFTs?

13 A The value of those two NFTs is less than \$100.

14 Q It wasn't my question, Mr. Mashinsky.

15 A That is my answer.

16 Q My question to you is in return, you paid your wife in
17 NFTs, correct?

18 A I did not pay her. The company paid her.

19 Q In return, Celsius -- sorry, strike that. In return,
20 you authorized Celsius to pay her in NFTs, correct?

21 A Yes.

22 MR. FREEDMAN: Your Honor, can I appoint you to
23 DX6, which is in evidence and may I approach the witness?

24 THE COURT: Go ahead.

25 BY MR. FREEDMAN:

1 Q I'm looking at about halfway down the page, Mr.
2 Mashinsky. And this is an email from you to a bunch of
3 folks at Celsius. And you say on May 27th, 2021 --
4 actually, Mr. Mashinsky, why don't you read that for the
5 record, the email at May 27th, 2021?

6 A You want me to read the whole email?

7 Q Just those two lines.

8 A Which lines?

9 Q The one from your May 27th, 2021, email.

10 A I'm sorry, which two lines?

11 THE COURT: Just read them yourself, Mr. Freedman,
12 let's move along.

13 MR. FREEDMAN: No problem, Judge.

14 BY MR. FREEDMAN:

15 Q Do you see where it says, Mr. Mashinsky, "We need to
16 move all NFTs off this wallet. Please arrange for a new
17 dedicated wallet with Sheran. Two NFTs go to Krissy wallet.

18 A I'm sorry, I didn't see -- I didn't -- I forgot to put
19 my contacts in.

20 THE COURT: Mr. Mashinsky, just stop.

21 THE WITNESS: Yeah, sorry I didn't see that other
22 line.

23 THE COURT: Mr. Mashinsky, just stop. Go ahead
24 and read the lines you want to ask a question about.

25 BY MR. FREEDMAN:

1 Q Do you see where it says "Two NFTs go to Krissy wallet
2 for the work she did on tracking down all Jason's assets.
3 Waseem has the details." Do you see that?

4 A Yes.

5 Q Krissy is your wife?

6 A Yes.

7 Q This is the authorization of paying your wife with NFTs
8 that we just discussed?

9 A Yes. What's the date on this? Sorry. It's May 27,
10 2021. This is months after everything with we talked about.

11 THE COURT: Ask your next question.

12 BY MR. FREEDMAN:

13 Q Mr. Mashinsky, you offer your declaration today under
14 penalty of perjury, correct?

15 A Yes.

16 Q You don't give any documentary support for your
17 statements beyond your word, correct?

18 A I don't know what that means, the question.

19 Q Did you attach any evidence to your declaration?

20 A I don't remember if anything was attached to my
21 declaration.

22 Q Do you, sitting here today, do you recall any emails
23 where that you were asked to attach to your declaration?

24 You know what? Strike that. It doesn't matter. Mr.

25 Mashinsky, on May 11th, 2022, you tweeted, is it correct

1 that you tweeted "Notwithstanding the extreme market
2 volatility, Celsius has not experienced any significant
3 losses and all funds are safe"?

4 A Again, I don't know from memory if that's correct or
5 not.

6 MR. FREEDMAN: Your Honor, I'm going to try to
7 refresh Mr. Mashinsky's recollection about his tweet, and in
8 so doing, I'm going to direct him to DX-47. May I approach?

9 THE COURT: Yes, please.

10 MR. HURLEY: Objection, Your Honor. This does not
11 appear to be a document was marked in any of the exhibit
12 lists we've received before today, before right now.

13 MR. FREEDMAN: Your Honor, this was either going
14 to be an impeachment exhibit or right now, we're going to
15 try to just refresh his recollection with it.

16 THE COURT: Go ahead.

17 BY MR. FREEDMAN:

18 Q Mr. Mashinsky, can you pay -- can you go to, do you see
19 on the top there's like a Page 1 of 6 on the front page?

20 A Yeah.

21 Q And then can you turn to Page 3 of 6 for me?

22 A Yeah.

23 Q Do you see a snapshot of your tweet there?

24 A Yes.

25 Q And it says "Notwithstanding extreme market,

1 volatility" -- well can you, can you read that to yourself
2 and let me know if that refreshes your recollection?

3 A Yes.

4 Q So you did tweet on May 11th, 2022, that
5 notwithstanding extreme market volatility, Celsius has not
6 experienced any significant losses and all funds are safe?

7 A This was in response to the Terra Luna collapse in
8 which over \$50 billion worth of funds were lost. So it's in
9 the context of -- the thread is talking about Terra Luna.

10 Q You made this tweet, Mr. Mashinsky?

11 A Yes.

12 Q And in fact, this tweet was a lie? Celsius funds were
13 not safe, correct?

14 A That's not true.

15 Q On May 11th, Mr. Mashinsky, Celsius was functionally
16 insolvent; isn't that correct?

17 MR. HURLEY: Objection.

18 MR. FREEDMAN: Did you say no?

19 THE COURT: What was the objection?

20 MR. HURLEY: Objection on the question of whether
21 or not Celsius was functionally insolvent on a given date.
22 I don't think there's been any foundation laid for the
23 witness's understanding of what constitutes insolvency at
24 that point in time.

25 THE COURT: Overruled.

1 BY MR. FREEDMAN:

2 Q I'm sorry. I didn't hear your answer, Mr. Mashinsky.
3 On May 11th, Celsius was functionally insolvent; is that
4 correct?

5 A That's not correct.

6 MR. FREEDMAN: I'm sorry, Your Honor, if I could
7 have just one moment

8 BY MR. FREEDMAN:

9 Q Let me see if I can -- have you, have you reviewed any
10 of the filings in the Celsius case, Mr. Mashinsky?

11 A Some of them. I don't know which one you're referring
12 to.

13 Q Let me see if I can refresh your recollection about
14 insolvency. Can you turn in that same document I've just
15 handed you, if you keep turning the page, you'll come across
16 a document which is 730-1.

17 A What pages again?

18 Q You have to keep flipping until you see on the top
19 where it says "Doc 730-1" and then it's Page 1 of 5 on the
20 top. Let me know when you see 730-1. Do you see it?

21 A Yes.

22 Q And then if you flip to 730-1, Page 4 or 5.

23 A Yep.

24 Q Take a look at D. Can you read that to yourself? Does
25 that refresh your recollection that on May 11th, 2022, when

1 you made this tweet, Celsius was functionally insolvent.

2 Its assets, its liabilities exceeded its assets.

3 A I don't know who prepared this, but I don't agree with
4 what it says.

5 Q Mr. Mashinsky, on December 3rd, 2021, you told the
6 public, did you not, that and I quote "Regulators have
7 looked into Celsius. They came back thumbs up. There's no
8 problem. We did not find anything."

9 MR. HURLEY: Objection.

10 THE COURT: Overruled.

11 BY MR. FREEDMAN:

12 Q Do you recall saying that?

13 A It's a quote from where?

14 Q It's a quote from an interview you gave.

15 A I don't recall that.

16 MR. FREEDMAN: Your Honor, if we may play DX-48.

17 Mr. Dan Stone can play that for us.

18 MR. HURLEY: Again, objection, Your Honor. DX-48
19 is a document that we've never seen or been notified of
20 until right now. It would only be fair for us to at least
21 see it in advance of it being published to the court.

22 THE COURT: Absolutely, objection sustained.

23 MR. FREEDMAN: Your Honor, these are impeachment
24 exhibits. It's a prior inconsistent statement of the same
25 exact witness. It's a video recording.

1 THE COURT: Before you can use it, you're going to
2 have to show it to Mr. Hurley to see whether there's an
3 objection and I'll rule on it.

4 MR. FREEDMAN: How would you like us to do that,
5 Your Honor?

6 THE COURT: Well, you'll do it during a recess
7 then. Have you finished your examination other than that?

8 MR. FREEDMAN: I have a few more questions that
9 all similarly require those sort of video links, Judge. So
10 if it's convenient time for the Court, we can go off for
11 maybe 10 minutes. I can show Mr. Hurley the various video
12 exhibits and we can come back.

13 THE COURT: It is now 10:58. We will take a 15-
14 minute recess until 11:13 during which I hope you'll show
15 Mr. Hurley the videos which you wish to show.

16 MR. FREEDMAN: Thank you, Judge.

17 THE COURT: We're in recess until 11:13.

18 (Off the record.)

19 THE COURT: Let's go back on the record. Mr.
20 Mashinsky, you're still under oath.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Mr. Freedman, have you had an
23 opportunity to show Mr. Hurley the video you want to show?

24 MR. FREEDMAN: We did show Mr. Hurley the videos.
25 Mr. Mashinsky attended that session over my objection

1 because they were impeachment exhibits. And just so the
2 Court is aware, there are five video clips. Each video clip
3 is about an hour interview or so with Mr. Mashinsky. We
4 excerpted out the relevant portions of those videos.
5 They're impeachment exhibits, which is why they weren't
6 included in the original exhibit list. That would defeat
7 the purpose of having them as impeachment.

8 THE COURT: I understand that. Let's move on.

9 MR. FREEDMAN: Your Honor, if it's, if it's
10 alright with you then, I can re-ask Mr. Mashinsky, now that
11 he's seen the video clips, if he's made this statement. If
12 he says yes, I, you know.

13 THE COURT: That's fine. Ask him the question.

14 BY MR. FREEDMAN:

15 Q Mr. Mashinsky, on December 3rd, 2021, you said that
16 regulators have looked into Celsius. They came back thumbs
17 up. There's no problem. We did not find anything. Do you
18 recall that?

19 A I saw the video, yes.

20 Q So you recall making that statement?

21 A I think it's out of context. It's a long interview.
22 So that excerpt, I don't think --

23 THE COURT: Mr. Mashinsky, did you make that
24 statement?

25 THE WITNESS: I said that. Again, I don't have it

1 word by word. Yes. If it sounds like what I saw in the
2 video.

3 THE COURT: Mr. Mashinsky, I just watched it. You
4 said it, answer the question directly. All right, we'll
5 move along.

6 THE WITNESS: Yes.

7 BY MR. FREEDMAN:

8 Q That was a lie, Mr. Mashinsky, correct?

9 A No.

10 MR. HURLEY: Objection, Your Honor.

11 BY MR. FREEDMAN:

12 Q Mr. Mashinsky, state regulators did not say thumbs up,
13 there's no problem. Isn't that correct?

14 MR. HURLEY: Your Honor, can I just state for the
15 record our objection to the use of this material?

16 THE COURT: Go ahead.

17 MR. HURLEY: So the material we're talking about
18 are excerpts seconds long. As counsel just said, each of
19 them is from an hour plus videotape. It's taken out of
20 context. It was provided to us and not the whole video, of
21 course, just the few seconds that they want to use moments
22 before the hearing today.

23 MR. FREEDMAN: Your Honor --

24 THE COURT: There's redirect, Mr. Hurley. It's
25 proper cross-examination, impeachment material. Ask your

1 next question, Mr. Freedman.

2 MR. HURLEY: Your Honor, respectfully, we're not
3 in a position --

4 THE COURT: Overruled. This is cross-examination.
5 Ask the next question, please.

6 BY MR. FREEDMAN:

7 Q Instead, Mr. Mashinsky, on September 17th, 2021, the
8 New Jersey Bureau of Securities ordered Celsius to cease and
9 desist from accepting any new earned assets from New Jersey.
10 Isn't that correct?

11 A What date? Sorry, which date?

12 Q September 17th, 2021.

13 A And this interview is from what day?

14 Q December 3rd, 2021.

15 A Yes.

16 Q So it is true that about three months before your
17 interview where you said regulators gave us the thumbs up,
18 you actually received a cease and desist from New Jersey,
19 correct?

20 A The information I was provided was that we came to an
21 agreement and that's why we launched --

22 THE COURT: Stop. Stop. I couldn't -- I lost the
23 sound. Ask your question again.

24 BY MR. FREEDMAN:

25 Q I said three months before you said to the public that

1 Securities regulators gave you a thumbs up, you actually
2 received a cease and desist from the New Jersey Bureau of
3 Securities; isn't that correct?

4 A Yes.

5 Q And isn't it also correct that on September 23rd, 2021,
6 also three months before you gave that interview, the
7 Kentucky Department of Financial Institutions also ordered
8 Celsius to cease and desist from soliciting or selling any
9 securities in Kentucky?

10 A Again, Celsius provides many services. You're talking
11 about one specific service.

12 THE COURT: Just answer the question, Mr.
13 Mashinsky. Are you able to answer the question?

14 THE WITNESS: He's asking about all the services
15 and quoting, offering securities? That's only one subset of
16 one product. So if he wants to talk about a specific
17 product, I'm happy to answer to that. These states did not
18 issue a cease and desist about all the services Celsius
19 provides.

20 BY MR. FREEDMAN:

21 Q Mr. Mashinsky, your quote is "Regulators have looked
22 into Celsius. They came back thumbs up. There's no
23 problem." That was a lie, correct?

24 A That's not correct.

25 MR. HURLEY: Objection, Your Honor, asked and

1 answered.

2 BY MR. FREEDMAN:

3 Q Isn't it true, the New Jersey Attorney General has also
4 recently stated that the New Jersey Attorney General never
5 gave you a thumbs up either, Mr. Mashinsky?

6 MR. HURLEY: Objection.

7 THE COURT: Sustained.

8 BY MR. FREEDMAN:

9 Q Sorry, New York Attorney General, I'm sorry for the
10 record, New York Attorney General. Mr. Mashinsky, you were
11 just sued by the New York Attorney General for persistent
12 fraud just last week?

13 A Yes.

14 Q And in it, the New York Attorney General alleges that
15 you committed persistent fraud? You do you dispute that?

16 MR. HURLEY: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. FREEDMAN:

19 Q Mr. Mashinsky, do you recall that in May of 2022,
20 Celsius board minutes recognized that its capital sits near
21 zero?

22 A I think it's in the minutes. Yes.

23 Q And isn't it true that despite that being in the May
24 minutes in a May 13th, 2022, AMA, you told your customers
25 that and I quote "Celsius is stronger than ever. We have

1 billions of dollars in liquidity. We continue to do what
2 Celsius does best, serve the community, protect the
3 community, make sure assets are there when they need them"?

4 A Yes.

5 Q That was a lie, Mr. Mashinsky, wasn't it?

6 A That's not correct.

7 Q A few days later, Mr. Mashinsky, on May 16th when your
8 board minutes reflect, again, that its capital sits near
9 zero, you gave an interview titled "Luna UST Aftermath on
10 Crypto Markets and Stablecoins." And isn't it true that in
11 that interview, you said, and I quote, "Companies like
12 Celsius and others are standing strong. Obviously, anyone
13 who is not ready for this has been taken out and I think
14 there's going to be a few more casualties. But at Celsius,
15 we are ready at all times."

16 A Yes.

17 Q That was a lie. Your capital was near zero, Mr.
18 Mashinsky, correct? You were not standing strong.

19 A That's not a lie.

20 Q Mr. Mashinsky, in August 5th of 2021 during an
21 interview, you stated "Celsius paid investors" -- I quote --
22 "almost 100 times more than your bank pays you and we do
23 that without taking any risk or taking minimal risks." Do
24 you recall making that statement?

25 A I don't think it's a statement. I think it's an

1 interview.

2 Q Did you make that statement in the interview, Mr.
3 Mashinsky?

4 A It was a hypothetical question from what I remember.

5 Q Did you make the statement in the interview, Mr.
6 Mashinsky?

7 A I answered a hypothetical question.

8 Q Mr. Mashinsky, yes or no, did you make the statement?

9 A Again, is that one of the segments you just showed me?

10 Q I'm happy to shot it to you if you'd like?

11 A No, I'm asking that's what I viewed outside?

12 Q Yes.

13 A So that was an answer to a hypothetical question.

14 Q Mr. Mashinsky, in fact, you made poor asset deployment
15 decisions, didn't you?

16 A I don't know. I don't understand the question.

17 Q Did you make poor asset deployment decisions?

18 A I didn't, I personally do not make asset deployment
19 decisions.

20 Q Did Celsius make poor asset deployment decisions while
21 you're at its chief executive officer?

22 MR. HURLEY: Objection.

23 THE COURT: Overruled.

24 BY MR. FREEDMAN:

25 A Celsius did several poor deployments, yes.

1 Q Mr. Mashinsky, on June 10th, 2022, you gave an AMA, in
2 fact, your last AMA, where you told customers that, I quote,
3 "Celsius has billions in liquidity and we provide immediate
4 access to everybody. Anyone who needs access to it, to the
5 liquidity and that includes institutions and that includes
6 people who want to, you know, get their coins back." Do you
7 remember making that statement?

8 A Yes.

9 Q Do you remember in that same interview, you then said
10 "When you went through several bear markets, you know what
11 to do, right? You need to have liquidity, which we have.
12 Again, that's why anyone who wants to withdraw has no
13 problem." Do you remember making that statement on June
14 10th, 2022?

15 A Yes.

16 Q And just two days later, Celsius paused withdrawals,
17 Mr. Mashinsky; isn't that right?

18 A Yes.

19 Q So you made those statements, you knew they were a lie,
20 didn't you?

21 A No. Can I answer?

22 Q You knew Celsius wouldn't be able to honor withdrawals?

23 A Can I answer the question?

24 Q You did, Mr. Mashinsky, you said no.

25 A I did not answer the question.

1 THE COURT: Let him answer the question. Go
2 ahead, Mr. Mashinsky.

3 BY MR. FREEDMAN:

4 A In April, Celsius had 24 billion in assets. In June,
5 it had six billion in assets. So obviously it provided
6 billions of dollars in liquidity as people withdrew their
7 assets from the platform. So I stated the facts.

8 Q You purposely misled people into thinking Celsius was
9 secure and that their assets could be taken off, so they
10 left their assets on Celsius to avoid a run on the bank and
11 that they continued putting assets into Celsius to sustain
12 your Ponzi? Isn't that true, Mr. Mashinsky?

13 MR. FREEDMAN: Objection, Your Honor.

14 THE COURT: I'm going to sustain the objection.
15 It's a compound question. You want to break things down?
16 You're going to be beating a dead horse here.

17 MR. FREEDMAN: Judge, this is my last question,
18 now two because it's compound.

19 BY MR. FREEDMAN:

20 Q Mr. Mashinsky, isn't it true that you purposely lied to
21 people to get them to leave their assets on Celsius to avoid
22 a run on the bank?

23 A That's not true.

24 Q And isn't it true, Mr. Mashinsky, that you purposely
25 misled people into thinking Celsius was secure, so they

1 would deposit more assets into Celsius to sustain your Ponzi
2 scheme?

3 MR. HURLEY: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. FREEDMAN: No further questions.

6 THE COURT: All right, redirect.

7 MR. HURLEY: No to redirect, Your Honor.

8 THE COURT: All right. You're excused, Mr.

9 Mashinsky. Go ahead, call your next witness.

10 MR. CHAPMAN: Your Honor, the plaintiffs call
11 Patrick Holert as their next witness. And Dean Chapman from
12 Akin Gump for the record.

13 THE COURT: Thank you, Mr. Chapman.

14 MR. CHAPMAN: We are retrieving the witness. He
15 will be here a moment.

16 THE COURT: Okay.

17 MR. CHAPMAN: This screen is frozen.

18 MR. HURLEY: Your Honor, if you can hear us,
19 you're frozen in the courtroom.

20 CLERK: I'll contact him. Thanks.

21 MR. CHAPMAN: The witness is returning from the
22 restroom.

23 CLERK: You ready, Judge?

24 THE COURT: In just a moment. Just bear with me a
25 second. I apologize for the interruption. My internet

1 connection went unstable. It's now back. So Mr. Chapman,
2 why don't you proceed. Has the witness been sworn?

3 CLERK: No.

4 THE COURT: Go ahead and swear in the witness.

5 CLERK: Please raise your right hand. Do you
6 solemnly swear or affirm that all the testimony you're about
7 to give before this court is the truth, the whole truth,
8 nothing but the truth?

9 MR. HOLERT: Yes, I do.

10 THE COURT: Thank you.

11 DIRECT EXAMINATION OF PATRICK HOLERT

12 BY MR. CHAPMAN:

13 Q Mr. Holert, you've submitted to declarations in support
14 of Celsius' motion for a preliminary injunction, correct?

15 A Correct.

16 MR. CHAPMAN: Your Honor, permission to approach?

17 THE COURT: Yes, go ahead.

18 MR. CHAPMAN: For the record, Your Honor, I'm
19 removing a stack of exhibits that have been used with Mr.
20 Mashinsky that were left at the witness stand.

21 THE COURT: Yes, that's fine.

22 BY MR. CHAPMAN:

23 Q Mr. Holert, do you recognize the two documents,
24 Defendants -- I'm sorry Plaintiff Exhibits 53 and 60 as the
25 declarations you submitted in support of Celsius'

1 preliminary injunction motion?

2 A Yes, I do recognize them.

3 Q And you understand that you submitted those documents
4 under penalty of perjury, correct?

5 A Yes.

6 Q And you reaffirm the truth of everything in those
7 documents today?

8 A Yes.

9 MR. CHAPMAN: Your Honor, Celsius would like to
10 tender both of Mr. Holert's written declarations in support
11 of Celsius' motion as his direct testimony in this matter.

12 MR. ROCHE: Objection to certain parts of the
13 affidavit that were noted in the amended pretrial order on
14 the basis of hearsay. Your Honor, if you would like, I can
15 read the paragraphs --

16 THE COURT: The objections are overruled. Do PX
17 53 and PX 60, are two Holert declarations are admitted into
18 evidence.

19 (Plaintiff's Exhibits 53 and 60 admitted into
20 evidence.)

21 THE COURT: Go ahead. Are you finished, Mr.
22 Chapman?

23 MR. CHAPMAN: Yes, I'll turn the witness over for
24 cross-examination.

25 CROSS-EXAMINATION OF PATRICK HOLERT

1 BY MR. ROCHE:

2 Q Good morning, Mr. Holert. My name is Kyle Roche and I
3 represent the defendants in this matter. You submitted two
4 affidavits in connection with Celsius' motion for
5 preliminary injunction?

6 A Correct.

7 Q And in the second affidavit -- and do you have both of
8 those affidavits in front of you?

9 A I do.

10 Q I'd like to refer you to your second affidavit. You
11 testified at Paragraph 5 that defendants returned far fewer
12 coins which would constitute a very significant loss.

13 MR. CHAPMAN: Objection. Can you read in the
14 whole statement?

15 MR. ROCHE: I can.

16 THE COURT: It's cross-examination. Go ahead, Mr.
17 Roche.

18 BY MR. ROCHE:

19 Q Okay. You testified defendants returned far fewer
20 coins which would constitute a very significant loss?

21 A Yes, that is my understanding.

22 Q But Celsius' internal management attributed profit to
23 KeyFi's activities in 2020, did they not?

24 A I haven't seen no records of profits that were
25 attributed to KeyFi's activities.

1 Q Prior to today, you've seen no documents that show
2 Celsius computed profits to KeyFi in 2020?

3 A I have not seen anything.

4 Q Okay. I'd like to bring up Exhibit 34, DX-34, which
5 has previously been admitted to evidence. And if Deanna, if
6 you can let Mr. Dan Stone present.

7 CLERK: He is presenting.

8 BY MR. ROCHE:

9 Q Mr. Holert, on the screen and let me know if you need
10 to zoom in, I'm showing you what's been previously marked as
11 Defendant's Exhibit 34. If we could show the top of
12 plaintiff's, excuse me, Defendant's Exhibit 34 for the
13 witness. Mr. Holert, let me know you recognize this
14 document. If you need me to navigate it at all, I'm happy
15 to, but on the top it says Celsius Network Limited. It was
16 produced to us by Celsius. Just let me know if you
17 recognize this document or if you've seen any documents
18 similar to this.

19 A I was -- I don't work in accounting. I've not worked
20 in accounting. I do not recall seeing this document.

21 Q Have you reviewed any of Celsius general ledgers from
22 either 2020 or 2021?

23 A I have not.

24 Q Okay. If we could -- I just want to ask you one
25 question about one line in this document and I understand

1 you are unfamiliar with it. If you could go to --

2 MR. HURLEY: Objection, Your Honor.

3 MR. ROCHE: Let me ask a question.

4 THE COURT: He hasn't asked a question yet, Mr.
5 Hurley. Ask your question.

6 BY MR. ROCHE:

7 Q Yes. Do you see the line saying "Accrued Expenses,
8 KeyFi Rev Sharing"? Do you see that --

9 THE COURT: You're on 63, is that correct?

10 BY MR. ROCHE:

11 Q Line 63.

12 A Okay, I see it.

13 Q And Mr. Stone, Daniel Stone, can you please go over?
14 You see it says you see it says 10 percent accrual for KeyFi
15 profit share and it shows a number of 1.2 million?

16 THE COURT: That's at Line 64?

17 MR. ROCHE: Yes, Your Honor.

18 BY MR. ROCHE:

19 A So what is, what is the date of this spreadsheet you're
20 showing me?

21 Q Sure. If you could scroll to the top. It's dated
22 March to December 2020.

23 A Okay.

24 Q And I can -- this document was produced by Celsius. If
25 you could scroll back down to Lines 63 and 64. I just want

1 to ask the witness one simple question. Do you see the line
2 that again referring to 10 percent accrual for KeyFi revenue
3 share, and it says 1.2 million?

4 A Yes.

5 Q Do you have any reason to doubt the accuracy of this
6 document?

7 MR. HURLEY: Objection.

8 THE COURT: Overruled.

9 BY MR. ROCHE:

10 A I don't know what that's based on. It says 10 percent
11 accrual. I don't know what 10 percent accrual means. I
12 don't know what this number is based on. I don't know what
13 this number is based on.

14 Q Okay. We can move on. Mr. Stone, thank you. If you
15 can please put the document down. Mr. Holert, you're
16 familiar with the asset purchase agreement between Celsius
17 and KeyFi?

18 A Yes. I haven't read it in quite a long time, but yes.

19 Q You helped negotiate it, correct?

20 A No, I did not help negotiate it.

21 Q Okay.

22 A I helped clarify some things in it, but I did not
23 negotiate the terms.

24 Q So you helped clarify some of the terms in the asset
25 purchase agreement?

1 A Correct.

2 Q Around the same time it was executed?

3 A No. It would have been -- I would have, I would have
4 started clarifying things a couple of couple of months
5 before it was executed, probably two or three months.

6 Q Leading up to when it was executed?

7 A Yeah. Well it took some time to execute, but, yes, in
8 the, in the months before it was executed.

9 Q Okay. Now in your affidavit at Paragraph 6, you
10 testify that defendants specifically promised that in
11 connection with the investment activities, they would hedge
12 against risk from price movements in the coins defendants
13 deployed. You testified to that?

14 A I'm sorry, which document?

15 THE COURT: The reply declaration, is that
16 correct?

17 MR. ROCHE: I apologize, Your Honor. Yes, that's
18 the reply declaration, Paragraph 6.

19 THE COURT: So that's PX 60.

20 BY MR. ROCHE:

21 A Sorry, repeat your question.

22 Q In your affidavit, you testified that defendants
23 specifically promised that in connection with their
24 investment activities, they would hedge against risks from
25 price movements in the coins defendants deployed, correct?

1 A In my conversations with Mr. Stone, he did say that
2 they were engaging in hedging activities.

3 Q Okay. But the asset purchase agreement doesn't place
4 any requirement on defendants to hedge against the risk of
5 price movements, does it?

6 A I haven't read this document in a long time.

7 Q But you were involved, you just testified that you were
8 involved in clarifying certain terms in the document,
9 correct?

10 A Certain terms on performance calculations only.

11 Q Okay. And in your affidavit, you testified that
12 defendants promised they would hedge, but in the asset
13 purchase agreement that governed the party's relationship,
14 your testimony is -- let me strike that. You don't know
15 sitting here today whether or not the asset purchase
16 agreement has any requirement on defendants to hedge against
17 the price movements of points? Yes or no.

18 A I haven't read it for some time so I don't recall.

19 Q Okay. Well if we can pull it up. I believe it's
20 Plaintiff's Exhibit 40. I know we've got a number of --
21 Your Honor, I don't know if the exhibits are already up
22 that.

23 THE COURT: I have Plaintiff's Exhibit 40 in front
24 of me.

25 MR. ROCHE: Okay. Your Honor, may I approach the

1 witness?

2 THE COURT: Go ahead.

3 BY MR. ROCHE:

4 Q Mr. Holert, do you recognize Plaintiff's Exhibit 40 as
5 the asset purchase agreement?

6 A Well, I have to flip through it if you could give me a
7 minute. Okay.

8 Q Do you recognize this document as the asset purchase
9 agreement?

10 A Yes.

11 Q Can you point the Court to where in the asset purchase
12 agreement it specifies that it's defendants responsibility
13 to hedge against the risk of price movements?

14 A Well this is, you know, a lengthy document. I would
15 have to flip through it again more carefully.

16 Q Sitting here today, do you recall putting anything in
17 the asset purchase agreement relating to defendant's
18 responsibilities to hedge against the price movement of
19 certain coins?

20 A Like I said, you know, this is a 33-page document and I
21 haven't looked at it for a couple of years.

22 Q You submitted an affidavit in connection with this
23 motion, correct?

24 A I did, but the affidavit does not, does not reference
25 the asset purchase agreement. It references Mr. Stone's

1 conversations with me where he talked about hedging his
2 activities.

3 Q And those conversations occurred before the asset
4 purchase agreement while he was managing Celsius' assets
5 before the asset purchase agreement, correct?

6 A I have to think about that. They definitely happened
7 after the asset purchase agreement was signed.

8 Q Okay. Are you aware, sitting here today, of any
9 agreement, written agreement, in which the defendants agreed
10 to hedge against the risk of price movements in coins that
11 they deployed?

12 A I would have to read that purchase agreement again.
13 But at the moment, I don't recall any.

14 Q At the moment, you don't recall any written agreement
15 where defendants agreed hedge against the price movement in
16 coins?

17 A At the moment, I don't recall any.

18 Q Mr. Holert, defendants, in fact, did supply you
19 information concerning their trading activities, correct?

20 A Limited information.

21 Q You're familiar with a program called DeBank?

22 A I am. DeBank does not provide a flow of activities.
23 It provides static positions on different platforms.

24 Q It gives you a balance of the amount of assets in a
25 particular wallet, correct?

1 A Correct.

2 Q And you shared KeyFi's DeBank information to show
3 others at Celsius that "DeFi platforms -- to show others the
4 DeFi platforms that KeyFi was using, correct?

5 A Correct.

6 Q And Mr. Stone sent you the DeBank link that listed out
7 his DeFi positions, correct?

8 A Correct.

9 Q And the DeBank link he sent you was publicly available,
10 correct?

11 A Yes, it's publicly available.

12 Q Mr. Holert, you are not aware of any communications
13 from KeyFi or Mr. Stone in which they misrepresented the
14 positions they had taken in KeyFi, correct?

15 A If you're talking about DeBank, DeBank does not
16 encompass all of KeyFi's activities.

17 Q How much of KeyFi's activities does DeBank cover?

18 A Offhand, I don't know. I'm just guessing 80 percent.

19 Q It could be more than 90 percent?

20 A I would just be guessing.

21 Q Okay. And is -- are you -- you didn't assert in your
22 affidavit, any of your affidavits, that the 20 percent that
23 DeBank may have left off that there are any
24 misrepresentations about those transactions? Did Mr. Stone
25 misrepresent any of the transactions that were unavailable

1 on DeBank?

2 A Transactions are not available on DeBank. It is
3 positions.

4 Q Got it. Mr. Stone didn't misrepresent any of the
5 positions that weren't available on DeBank, correct?

6 A I do not know.

7 Q Okay. In your second affidavit, you referenced a
8 January 28th, 2021 meeting with Mr. Stone.

9 A Okay.

10 Q Do you recall referencing --

11 THE COURT: Paragraph 6.

12 BY MR. ROCHE:

13 Q Paragraph 6 of Exhibit 60?

14 A Yes.

15 Q You took notes of that meeting, correct?

16 A Correct.

17 Q You referenced those notes in your affidavit?

18 A Correct.

19 Q In that meeting, Mr. Mashinsky said that you should
20 always be booking profits in U.S. dollars?

21 MR. CHAPMAN: Objection.

22 THE COURT: Overruled.

23 BY MR. ROCHE:

24 Q You can answer.

25 A That that is what, that is what Jason said Mr.

1 Mashinsky told him. He told, Mr. Stone told me that Mr.
2 Mashinsky told him that he should book profits in
3 stablecoins.

4 Q Did you check with Mr. -- and you're not refuting that
5 Mr. Mashinsky told him that, are you? Are you refuting that
6 Mr. Mashinsky, in fact, told him that?

7 A I accept, I accept Mr. Stone's word.

8 THE COURT: Let me ask you. You check with Mr.
9 Mashinsky as to whether he told Mr. Stone?

10 MR. ROCHE: That question is for you, Mr. Holert.

11 THE WITNESS: I did not check with Mr. Mashinsky
12 that he said that with Mr. -- I did not confirm with Mr.
13 Mashinsky that he said that to Mr. Stone.

14 BY MR. ROCHE:

15 Q And your notes reflect that Mr. Mashinsky stated that
16 Celsius KeyFi had made \$30 million in profits?

17 A No, that is not from -- that is from Mr. Stone. That
18 was Mr. Stone's claim. That is not Mr. Stone representing
19 something that Mr. Mashinsky said.

20 Q One moment, Your Honor. So it's your testimony that it
21 was Mr. Stone's misrepresent -- representation that it was
22 \$30 million in profits, correct?

23 A Yes.

24 Q Did you check at the time with anybody to see whether
25 or not that information was accurate?

1 A I did not.

2 MR. ROCHE: No further questions.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION OF PATRICK HOLERT

5 BY MR. CHAPMAN:

6 Q For the record, Dean Chapman, Akin Gump Strauss Hauer
7 and Feld. Mr. Holert, you were asked some questions about
8 hedging defendants' DeFi investments, correct?

9 A Correct.

10 Q Why was hedging defendants' DeFi investments important
11 to you?

12 A Well, mainly to prevent substantial downsides from
13 investment activities.

14 Q And who, in your view, was responsible for hedging?

15 A Absolutely the KeyFi and Mr. Stone.

16 Q Why do you say that?

17 A The KeyFi activities were very complex and nobody had
18 any insight into what those activities were outside of
19 KeyFi. We understood what platforms were being used, what
20 strategies were being used, but we did not have any ability
21 to follow transactions and day-to-day activities that were
22 being conducted. Only KeyFi had that ability to monitor
23 day-to-day activities and movements of coins within
24 platforms and across platforms. Just looking at balances,
25 we have no idea what kind of transactions led to those

1 balances.

2 Q Can you elaborate on the conversations you had with Mr.
3 Stone with respect to responsibility for hedging defendants'
4 DeFi investments?

5 A Mr. Stone represented that they were conducting risk
6 management. He told me that he had an employee of KeyFi,
7 John Siena, who was responsible for risk management. We did
8 have some calls with Mr. Stone and Mr. Siena and where they
9 were addressing their risk management activities. Mr. Stone
10 told me he was hedging Ethereum movements on the dYdX
11 platform. And so very much we understood that KeyFi was
12 hedging their activities. And also on the profit
13 calculations that we had laid out, KeyFi would have a
14 negative incentive for losses. So we had, we had a loss
15 carry forward. So they very much had an incentive to hedge
16 their activities.

17 Q You mentioned Mr. John Siena, is that right?

18 A Yes.

19 Q And who did you say he was?

20 A He was an employee of KeyFi.

21 Q And you had conversations with him; is that correct?

22 A We did have a couple of meetings where we had risk
23 management meetings with Jason and Jason included John in
24 some of those meetings.

25 Q Do you recall when those meetings took place?

1 A They would be in the first quarter of 2021.

2 Q Do you have an understanding from those meetings of
3 what Mr. Siena was doing with respect to hedging defendants'
4 DeFi investments?

5 A Not all of them, not all of their hedging activities.
6 Some of the hedging activities would be setting bans on some
7 of the platforms. So basically stop losses. You would, you
8 would stop out positions at certain levels and they, you
9 know -- and this specifically referenced the dYdX platform
10 as a hedging platform that he used.

11 Q And you recall when that was?

12 A Well definitely in our meetings, in our personal
13 meetings during January of 2021.

14 Q You testified to notes you took after January 28th,
15 2021, meeting, is that right?

16 A Correct.

17 Q And where did that meeting take place?

18 A It took place at Mr. Stone's residence at the time in
19 Puerto Rico.

20 Q And why were you in Puerto Rico meeting with Mr. Stone
21 at that time?

22 A I was meeting with Mr. Stone because Celsius had
23 concerns about Mr. Stone's activities and we wanted to draw
24 some of the coins back in and there were concerns that he
25 would not return coins to Celsius.

1 Q Mr. Holert, you were asked questions about the
2 calculation of profit share on cross-examination. Right?
3 Is that correct?

4 A Yes.

5 Q What evidence have defendants ever provided to you
6 regarding the amount of the alleged profit share?

7 A Personally, I have not seen anything to indicate there
8 have been any profits.

9 Q Do you believe that defendants activities did in fact
10 generate any profits?

11 MR. ROCHE: Objection, relevance.

12 THE COURT: Overruled.

13 BY MR. CHAPMAN:

14 A Collectively, I do not believe they resulted in
15 profits.

16 Q What's the basis of that belief?

17 A We -- at Celsius, we had weekly risk committee meetings
18 over the first quarter of 2021. I led those risk committee
19 meetings much of the time during those meetings were
20 discussing KeyFi's activities and the Celsius concerns over
21 those activities and what was being done. We also never,
22 you know, Mr. Stone had claimed for many months that he was
23 working on a system that would make his activities more
24 transparent, keep track of transactions, and report on
25 results. That that program is called Wormhole. And in, you

1 know, weekly meetings or more frequently with Mr. Stone, we
2 would ask about the status of that program. We were
3 repeatedly told it was close to being delivered and, to my
4 knowledge, it was never delivered. I never saw any evidence
5 that it was delivered. And so without having an internal
6 program from KeyFi to monitor transactions, monitor
7 activities, monitor results, it was not possible to do it
8 from outside of KeyFi.

9 Q You were asked questions though about an application
10 called DeBank on cross-examination, right?

11 A Correct.

12 Q Is it your testimony that DeBank could not have been
13 used to track defendants' DeFi deployments?

14 A DeBank can show balances only. We cannot monitor where
15 coins are coming from, where they're going, how they're
16 being used on different platforms. There's no way you can,
17 you can just look at balances and know what's behind the
18 balances. There's no way to monitor the trading activities.

19 Q You were asked questions with respect to your role in
20 negotiating the asset purchase agreement. Is that correct?
21 Strike the question. You testified on cross-examination you
22 had a role in connection with clarifying certain terms of
23 the APA. Is that correct?

24 A Correct.

25 Q What terms?

1 A It was the profit calculations.

2 Q And what is your view as to how profit was to be
3 calculated?

4 A Profit is based on coins. So if we gave a certain
5 number of -- if we sent a certain number of coins to KeyFi,
6 we would need to receive more coins back from KeyFi. So if
7 we, if we, for instance, transferred 100 coins of a certain
8 type of KeyFi, we would need to receive more than 100 back.
9 And the difference would be the profits.

10 Q And are you draw -- was your answer complete?

11 A And we specifically designed it as a function of coins
12 because we did not want KeyFi to just collect profits from
13 appreciation of coins. And so if we deployed 100 coins to
14 KeyFi and they did nothing with them and just sat on them
15 and those coins appreciated in terms of U.S. dollars, we
16 should not be paying a profit share on that. So we, we set
17 out the profits to be a function of the number of coins
18 generated in profits by KeyFi.

19 Q Understood. Mr. Holert, I'd like to read you a few
20 questions and answers from Mr. Jason Stone's deposition and
21 ask you a couple of questions about the exchange.

22 MR. ROCHE: Objection.

23 THE COURT: Overruled. Go ahead.

24 MR. CHAPMAN: Okay, thank you.

25 BY MR. CHAPMAN:

1 Q And so the counsel can follow along, I'm going to read
2 first from Page 53 of Mr. Jason Stone's deposition and Mr.
3 Hurley from Akin Gump is doing the questioning.

4 MR. ROCHE: Could you give us a second just to
5 pull the deposition transcript up, Your Honor.

6 THE COURT: Yes, go ahead. Pull it up.

7 MR. HURLEY: And actually while we have a break,
8 I'm informed that perhaps the Court has not reopened the
9 listen only line for the hearing.

10 CLERK: I think that's right. Unless they have a
11 problem listening.

12 MR. HURLEY: We have some folks trying to listen
13 that have not been able to since --

14 THE COURT: Deanna, are you able -- is the
15 listening line open?

16 CLERK: Deanna stepped away, Judge. This is
17 Jessica. I'm able to hear everything.

18 THE COURT: Okay.

19 CLERK: You have one party in the waiting room but
20 they're not registered.

21 THE COURT: That's fine. Thank you very much,
22 Jessica.

23 CLERK: You're welcome.

24 THE COURT: Mr. Roche, let us know when you have
25 the deposition open.

1 MR. ROCHE: It's getting sent to me right now.

2 I'm fine with plaintiff's counsel resuming.

3 THE COURT: Go ahead.

4 BY MR. CHAPMAN:

5 Q Okay. And I'm on Page 53 of the transcript, Line 4.

6 And again, this is Mr. Hurley from Akin Gump asking the
7 question. "Anyone other than Harumi or Connor that you
8 believe witnessed any of these Mashinsky authorizations to
9 you to take properties advances on profit share? Answer: I
10 believe Patrick Holert was present at certain times and I
11 believe Roni Pavon may have been present one or two times,
12 but I can't recall." Mr. Holert, did you ever witness Mr.
13 Mashinsky authorized Mr. Stone to take an advance on profit
14 share?

15 A No, I did not.

16 Q Do you remember anything on that topic?

17 A No.

18 Q The transcript continues immediately from there on Page
19 53 at Line 12. "Question: So you think Patrick Holert may
20 have been present in a conversation where Alex Mashinsky
21 authorized you to take property as an advance on profit
22 share for services rendered by KeyFi?" There is an
23 objection and it continues. "Answer: I would characterize
24 it as Patrick Holert was present during discussions in which
25 Alex and I openly talked about the fact that I had been and

1 was continuing to take small amounts of money that would be
2 debited against our profit share, a/k/a, yes, taking early
3 advances on profit share." Mr. Holert, were you, in fact,
4 ever present for such conversations?

5 A No.

6 Q Do you have any recollection of such conversations?

7 A No.

8 Q I'd like to jump forward to Page 75 of the transcript.
9 Let me know when you're there.

10 A Go ahead.

11 Q Line 24, questioning continues. "Question" -- and
12 again, question to Mr. Stone" -- Can you identify any
13 written communication in which anyone at Celsius ever told
14 you Celsius was hedging against impermanent loss from
15 Celsius KeyFi activities? Answer: I can't identify a
16 specific document at this time. Question: Do you have
17 reason to believe that such a document exists? Answer: Yes,
18 absolutely. Question: In what form? Answer: Probably an
19 email or WhatsApp message. Question: Who it Celsius gave
20 the assurances you are referring to? Just names, that's all
21 I'm looking for. Answer: Patrick Holert primarily and then
22 I believe at different points in time, Alex Mashinsky
23 himself. Connor Nolan made mentions of hedging, Waseem
24 Shabout. I'm not sure if anyone else." Okay, Mr. Holert,
25 are you aware of any communications, written or otherwise,

1 in which you told Mr. Stone, Celsius was hedging against
2 impermanent loss from Celsius KeyFi activities?

3 A No.

4 Q The transcript continues from that point at Page 76,
5 Line 23. "Question: I just want to be clear. I'm not even
6 talking about people that made mention of hedging. I'm
7 talking about people that you're saying assured you that
8 Celsius was hedging the activities that KeyFi and Celsius
9 KeyFi were undertaking with Celsius coins. Answer: That
10 would be specifically Patrick Holert, Alex Mashinsky, Harumi
11 Urata-Thompson and I believe Waseem Shabout." Mr. Holert,
12 did you ever assure Mr. Stone that Celsius was hedging the
13 activities that KeyFi and Celsius KeyFi were undertaking
14 with Celsius coins?

15 A No, absolutely not.

16 Q You believe that was defendant's responsibility, right?

17 A Absolutely.

18 MR. CHAPMAN: I have nothing further.

19 THE COURT: All right. I have a few questions,
20 Mr. Holert and then if you have further questions, I'll
21 allow you to do that.

22 Mr. Holert, do you have your reply declaration in
23 front of you?

24 THE WITNESS: Yes.

25 THE COURT: I have questions about Paragraph 6.

1 THE WITNESS: Sorry, which document?

2 THE COURT: The reply declaration dated --

3 THE WITNESS: Oh, 60?

4 THE COURT: December 1, yeah, 60.

5 THE WITNESS: Okay, yes.

6 THE COURT: And specifically, my questions are in
7 Paragraph 6.

8 THE WITNESS: Okay.

9 THE COURT: The third sentence says "Defendants
10 specifically promised that in connection with their
11 investment activities, they would hedge against risks and
12 price movements in the coins defendants deployed." So when
13 you say "Defendants specifically promised," give me the
14 names of the people who actually -- who you say promised
15 that?

16 THE WITNESS: Yeah. Well Mr. Stone told us that
17 they had risk management activities and they were employing
18 hedging strategies and he identified one of his employees as
19 being involved in in those risk management activities.

20 THE COURT: Who did he identify?

21 THE WITNESS: He said John Siena was focused on
22 risk management activities and he was a KeyFi employee.

23 THE COURT: Was Mr. Siena present in any of your
24 conversations with Mr. Stone about hedging?

25 THE WITNESS: Oh, yes, we did have meetings

1 together where he was present.

2 THE COURT: And did either -- in the meetings when
3 Mr. Siena was present, did Mr. Stone or Mr. Siena make any
4 statements that KeyFi was hedging?

5 THE WITNESS: They did describe hedging
6 activities.

7 THE COURT: Well, I want to separate out. You say
8 they. I want to be clear on -- Did Mr. Siena say that they
9 were hedging?

10 THE WITNESS: You know, I don't recall what he, I
11 don't recall that. But we did have meetings where, where he
12 was present to talk about risk management and those, those
13 conversations did include hedging.

14 THE COURT: Tell me again that same sentence,
15 defendants specifically promised that in connection with our
16 investment activities they would hedge risks, on how many
17 occasions did Mr. Stone make statements to you or in your
18 presence that KeyFi --

19 THE WITNESS: I'm sorry, that they were hedging?

20 THE COURT: Yes.

21 THE WITNESS: Okay. How many?

22 THE COURT: Yes. Was it once, more than once?

23 THE WITNESS: Definitely more than once. More
24 than, yeah, you know, more than two, three, you know.

25 THE COURT: How often were you meeting with Mr.

1 Stone? I got a sense that you're having weekly meetings?

2 THE WITNESS: We had, we had weekly meetings
3 scheduled to discuss risk and how KeyFi was managing risk
4 for its activities. And I can't say they happened
5 regularly. Well they were scheduled weekly but say they
6 happened probably 75 percent of the time. And so there were
7 regularly scheduled meetings for every week for months where
8 Mr. Stone would talk about his activities and these were on
9 the calendar as risk meetings to discuss the KeyFi
10 activities and how Mr. Stone was addressing risk.

11 THE COURT: Let me ask you a question. Again in
12 Paragraph 6, the sentence for instance in an email on
13 October 18th, 2020, Stone assured Celsius personnel that
14 defendant would not would -- "would not open ourselves up in
15 impermanent loss" in connection with investing Celsius'
16 coins. You say Stone assured Celsius personnel. Who
17 received those assurances? You were you were present?
18 Well, this was an email. To whom was that email sent?

19 THE WITNESS: I'm not sure who was on it.

20 THE COURT: Mr. Chapman, is that email marked in
21 evidence?

22 THE WITNESS: I don't have it in front of me.

23 THE COURT: Mr. Chapman. Is that an email that's
24 in evidence?

25 MR. CHAPMAN: The email is not in evidence. I'm

1 happy to offer it to refresh the witness's recollection if
2 Your Honor desires.

3 THE COURT: No, I'll leave it to others to do.
4 What is impermanent loss?

5 THE WITNESS: Yeah, so impermanent loss refers to,
6 it refers to investment activities using automated market-
7 making systems where two different coins are put up as
8 pairs. So for instance, you could have a pair for Bitcoin
9 and Ethereum and so people can go on to the system and make
10 exchanges on the system. And impermanent loss occurs when
11 there's excess demand for one of those coins and it drives
12 up the price relative to the other. And so people that have
13 put up pairs of coins could realize a loss from a change in
14 the relative percentage of coins in -- on the system. So
15 for instance, if you had two coins that were say of the same
16 value and you had 50 percent of Coin A and 50 percent Coin
17 B, if there was excess demand for Coin A and it drove up the
18 price of Coin A and the relative value of Coin A, as part of
19 the whole became 60 percent, increased from 50 to 60
20 percent, that would drive down the relative value of Coin B
21 to 40 percent. And the investors who contributed coins at
22 the equal weighting of 50:50 could incur a loss from that
23 price movement.

24 THE COURT: How would you hedge against that risk?

25 THE WITNESS: One way to hedge would be to set

1 bans. So if, for instance, there was a relative movement of
2 5 percent, then you would liquidate your positions. You
3 know that's a simple strategy. But other than that, I don't
4 know any other strategies for hedging that.

5 THE COURT: All right. Mr. Roche, do you have any
6 other questions?

7 MR. ROCHE: Just two brief questions, Your Honor.

8 THE COURT: Go ahead.

9 BY MR. ROCHE:

10 Q Mr. Holert, so I just want to understand your
11 testimony. You testified that in 2020 and 2021, you,
12 Celsius, didn't have the ability to track positions in DeFi?

13 A I think your question is a bit misleading. So you're
14 talking about --

15 Q Did you, did you -- my apologies, go ahead.

16 A I said we did not have the ability to track all
17 transactions that KeyFi was doing.

18 Q Did you have the ability to manage risk in DeFi in
19 2020?

20 MR. CHAPMAN: Objection.

21 THE COURT: Overruled.

22 BY MR. ROCHE:

23 A When you're talking about managing risk, there's a
24 difference between managing risk on activities that you know
25 about and can follow and another issue of managing risk on

1 someone else's activities that you don't know what their
2 transactions and what those activities are. So Celsius also
3 deployed certain DeFi strategies on its own and our risk
4 mitigation was to set basically bans that we would sell
5 that. But if you're talking about KeyFi, we could not
6 manage risk on KeyFi's activities because we did not know
7 what those activities were. We knew what platforms were
8 being used but we did not know the transactions that were
9 being conducted on those platforms.

10 Q You knew, and I want to understand things, so you're
11 saying Celsius managed risk on its own DeFi positions in
12 2020, correct?

13 A On activities where we --

14 Q It's yes or no.

15 THE COURT: Excuse, Mr. Roche, don't interrupt the
16 witness.

17 MR. ROCHE: Apologies.

18 THE COURT: That was not a question that called
19 for yes or no answer. Go ahead.

20 BY MR. ROCHE:

21 A So on activities where we were principally engaged and
22 engaging in the transactions, we had simple risk mitigation
23 strategies of just simply liquidating when prices moved a
24 certain amount.

25 Q And you were able to track, at least with respect to

1 some of the positions, I think you said about 80 percent,
2 through DeBank, the positions KeyFi was taking. My question
3 is did you ever ask Mr. Stone or anyone else at KeyFi
4 whether or not they had similar stop losses in place to
5 manage risk on those positions?

6 A Mr. -- we did, I did discuss that and that was
7 something that Mr. Stone represented he was doing. But, you
8 know, I didn't know, you know, it is impossible for us to
9 follow every single transaction that was being conducted on
10 the KeyFi side.

11 MR. ROCHE: No further questions, Your Honor.

12 THE COURT: Thank you, very much. Mr. Chapman,
13 any last questions?

14 MR. CHAPMAN: Nothing further, Judge.

15 THE COURT: All right. You're excused. Thank you
16 very much. Does the plaintiff rest?

17 MR. CHAPMAN: Yes.

18 THE COURT: All right, we're going to take our
19 lunch break. It's now 11:21. Let me ask you all, how long
20 do you want for lunch? I'll give you up to an hour and a
21 half. If you want to do shorter, we'll do shorter.

22 MR. CHAPMAN: Shorter.

23 MR. ROCHE: Short.

24 MR. HURLEY: An hour is good for us.

25 THE COURT: Erin, is that okay with you?

1 CLERK: Yes.

2 THE COURT: All right, so we'll resume at 1:20.

3 Okay. Thank you very much.

4 CLERK: If the parties that are on Zoom could stay
5 connected and just, you know, mute their line, that way I
6 don't have to readmit them. Thank you.

7 (Off the record.)

8 CLERK: All right. It's started.

9 THE COURT: All right, good afternoon. Can
10 everyone in the courtroom. Hear me?

11 CLERK: Yes.

12 THE COURT: All right. So Mr. Nolan is in the
13 witness box. Karen, would you swear in the witness?

14 CLERK: Please raise your right hand. Do you
15 solemnly swear or affirm that the testimony you're about to
16 give before this court is the truth, the whole truth, and
17 nothing but the truth?

18 MR. NOLAN: I do.

19 CLERK: Just speak into the --

20 MR. NOLAN: I do.

21 THE COURT: Go ahead.

22 CROSS-EXAMINATION OF CONNOR NOLAN

23 BY MR. ROCHE:

24 Q Good afternoon, Mr. Nolan.

25 A Good afternoon.

1 Q My name is Kyle Roche and I represent the defendants in
2 this case. I took your deposition on December 20th, 2022.
3 Do you recall that deposition?

4 A Yes, I do.

5 Q Is there anything that would impair your ability to
6 tell the truth today?

7 A No.

8 Q Have you discussed the testimony that has occurred this
9 morning in the courtroom with anybody?

10 A No.

11 Q And you are the head of institutional lending at
12 Celsius?

13 A Yes.

14 Q In going forward, I'll -- if I use the term Celsius,
15 I'm referring to Celsius Network Limited. That is the
16 entity you are employed at, correct?

17 A Yes.

18 THE COURT: Are you still employed by Celsius, Mr.
19 Nolan?

20 THE WITNESS: Yes, I am.

21 THE COURT: All right. Go ahead, Mr. Roche.

22 BY MR. ROCHE:

23 Q You began working at Celsius in March 2020?

24 A Yes, that's correct.

25 Q Your previous role at Celsius was head of coin

1 deployment?

2 A Yes, that was one of my previous roles.

3 Q As head of coin deployment. You reported to Harumi

4 Urata-Thompson?

5 A Yes.

6 Q Miss Thompson was Celsius' former CFO?

7 A Yes.

8 Q As head of coin deployment, you were involved with

9 Celsius DeFi activities?

10 A Yes

11 Q In this role, you managed DeFi deployments as well as

12 the movement of coins when it regarded the allocation

13 Celsius made in other DeFi deployments, correct?

14 A Yes, I was involved in the movement of coins to the

15 other deployments.

16 Q DeFi deployments?

17 A Yes.

18 Q Celsius deployed coins into DeFi through third parties,

19 correct.

20 A Yes, that's correct.

21 Q Celsius also deployed funds into DeFi itself, correct?

22 A Yes, that's correct.

23 Q And the funds that were deploying into DeFi were

24 customer deposits?

25 A Yes, I would believe so.

1 Q I want to discuss your involvement with the defendants
2 in this case. You met Jason Stone in late summer, early
3 fall of 2020?

4 A Yes, I did.

5 Q Most of your interactions with Mr. Stone revolved
6 around DeFi deployments?

7 A Yes, that's correct.

8 Q You are the individual who sent Celsius coins to Stone
9 and KeyFi for deployment?

10 A Yes, I was one of the individuals. I'm not sure if
11 there were others.

12 Q You discussed with Mr. Stone strategies around coin
13 deployment into DeFi?

14 A Yes, I did.

15 Q You are aware that at some point in time, Celsius and
16 KeyFi entered into an agreement?

17 A Yes.

18 Q You are aware of that as part of that agreement, there
19 was a profit share between Celsius -- between Celsius and
20 KeyFi as part of the agreement?

21 A Yes, I was told that there was a profit share
22 agreement.

23 Q Miss Thompson, the CFO of Celsius oversaw Celsius'
24 deployment of coins into DeFi?

25 A Yes, that's correct.

1 Q Mr. Mashinsky was also involved in the deployment of
2 coins through KeyFi?

3 A Yes.

4 Q Mr. Mashinsky had knowledge of the coins being deployed
5 through KeyFi?

6 A I'm sorry, can you repeat that?

7 Q Yes, Mr. Mashinsky had knowledge of the coins being
8 deployed by Celsius through KeyFi?

9 A Yes, that I'm aware of.

10 Q Mr. Mashinsky was involved with meetings were
11 deployment strategies and coin allocations through KeyFi
12 were discussed?

13 A Yes.

14 Q Now I believe you just testified Celsius also deployed
15 coins into DeFi without using a third party.

16 A Yes.

17 Q In 2020, you were deploying Celsius coins yourself
18 directly into DeFi?

19 A Yes, I was one of the people that deployed. Yes.

20 Q Who are the others?

21 A I believe in 2020 that I can recall, Assaf Aram, who
22 worked on the trading team, and I can't recall any others at
23 this time.

24 Q Mr. Mashinsky was involved in the discussions
25 surrounding your deployment of funds into DeFi?

1 A Yes, he was.

2 Q You had weekly meetings where you discussed deployment
3 strategies with Mashinsky?

4 A Yes.

5 Q Celsius had weekly meetings that were internal to
6 Celsius and a weekly meeting with KeyFi team regarding
7 deployments, correct?

8 A Yes.

9 Q There were two different, one internal, one with KeyFi?

10 A Correct, as best as I can recall.

11 Q At the weekly internal meetings, Miss Thompson, the
12 CFO, was present?

13 A Yes, I believe so.

14 Q At the weekly internal meetings, Patrick Holert was
15 present?

16 A I believe so, but I can't recall exactly.

17 Q You believe Patrick Holert was present at the weekly
18 meetings with KeyFi?

19 A I believe so, but I don't remember exactly.

20 Q What exactly what's -- can I ask why don't you recall
21 exactly?

22 A I just can't remember offhand an exact situation but I
23 believe that he was one of the invites on that meeting.

24 Q Okay, I want to focus on just the weekly meetings
25 between Celsius and KeyFi. So not the internal ones for

1 now. You regularly attended those meetings?

2 A Yes.

3 Q So did Mr. Stone?

4 A Yes.

5 Q Mr. Mashinsky?

6 A I believe so. Yes.

7 Q Miss Thompson?

8 A Yes.

9 Q You spoke with Mr. Stone about KeyFi's profit share
10 prior to him leaving KeyFi, correct?

11 A Yes, I did.

12 Q Now in your role as the head of coin deployment, I want
13 to discuss how coins were sent by Celsius to KeyFi. There
14 were times KeyFi and Mr. Stone would send you requests to
15 deploy funds, correct?

16 A Yes, they would send requests for funds to be sent to
17 KeyFi.

18 Q The usual process for that was -- to send KeyFi coins,
19 was for you to get approval from Celsius CFO, Miss Thompson?

20 A Either direct approval or if it fell within the
21 parameters of what I understood for Celsius to be able to
22 send to KeyFi, then, yes, it could be some.

23 Q And so okay. So there was a credit line that KeyFi
24 had?

25 A Yes.

1 Q Mr. Patrick Holert approved the credit line to KeyFi?

2 A If I recall correctly, I believe so.

3 Q And you believe that credit line was over \$50 million?

4 A Yes, I believe so.

5 Q Was it over \$100 million?

6 A I believe so, but I can't recall the exact figure of
7 the credit line.

8 Q Was it over \$200 million?

9 A Again, I can't recall the exact figure. But I know it
10 varied over time so I can't recall exactly.

11 Q You recall it was over at least 100 million but you
12 don't recall the exact number?

13 A Yes.

14 Q If I use the term OXB-1 address, will you know what I
15 am referring to?

16 A Yes, I will.

17 Q That is the address most of the coins that Celsius
18 deployed to KeyFi were deployed through, correct?

19 A I believe so.

20 Q You deployed a variety of coins to KeyFi, correct?

21 A Yes.

22 Q You deployed wrapped Bitcoin to KeyFi?

23 A Yes.

24 Q And that's an Ethereum based version of Bitcoin,
25 correct.

1 A Yes, in premise, yes.

2 Q It represents Bitcoin?

3 A I don't know if I would use the term "represents," but
4 in deployment capabilities, it's used as a -- Celsius used
5 it as a deployment of Bitcoin.

6 Q Okay. You deployed Ethereum to KeyFi?

7 A Yes.

8 Q You deployed stablecoins to KeyFi?

9 A Yes.

10 Q And all of those assets came from customer deposits?

11 A I don't know if all of them, but I believe some of them
12 were from customer deposits.

13 Q Most of them?

14 A I would believe so.

15 Q The vast majority of them?

16 A I would believe so.

17 Q In 2020, you understood that KeyFi's activities in DeFi
18 were profitable?

19 A Yes, that was my understanding at the time.

20 Q Mr. Stone told you that KeyFi's activities were
21 profitable?

22 A Yes.

23 Q Mr. Mashinsky told you that KeyFi's activities were
24 profitable?

25 A I believe so.

1 Q Miss Thompson told you that KeyFi's activities were
2 profitable?

3 A I can't recall exactly, but I believe that it was
4 discussed. Yes.

5 Q Miss Thompson was the CFO of Celsius?

6 A Yes.

7 Q In 2021, Mr. Mashinsky also told you that KeyFi's
8 activities were profitable?

9 A I can't recall exact dates in time I was told, but I
10 would believe so.

11 Q In 2021, Miss Thompson also told you that KeyFi's
12 activities were profitable?

13 A I would say the same. I don't know exact point in
14 time, but I would think that it was discussed.

15 Q These discussions concerning KeyFi's profitability
16 happened at the KeyFi weekly meetings?

17 A That was one avenue where it was discussed, I believe.

18 Q Where were the other avenues?

19 A Either on other calls or in Slack or other
20 communications, email. I'm not sure.

21 Q KeyFi's profitability was frequently discussed
22 throughout the time that Celsius deployed coins through
23 KeyFi?

24 A Because the belief was that it was profitable at the
25 time.

1 Q Okay. Your Honor. I don't remember earlier if you
2 admitted into evidence, Defendant's Exhibit 3, 4 and 5.

3 THE COURT: I believe so.

4 MR. ROCHE: We haven't marked them.

5 THE COURT: Mr. Hurley, do you agree? I don't
6 have my list in front of me.

7 MR. HURLEY: I don't think we did.

8 THE COURT: Hold on. Just give me a second.
9 Which exhibits, Mr. Roche?

10 MR. ROCHE: Exhibit 3, 4, and 5.

11 THE COURT: Okay. There were no objections.
12 Everything -- let me just look through this, okay. So
13 Defendant's Exhibit 1 through 23 are all admitted in
14 evidence. I overruled the objections to those exhibits as
15 to which there were objections. What I didn't rule on yet
16 was Exhibit 24, 30. On 31, the objection was overruled and
17 it was admitted. The objection to 32 was sustained and the
18 objection to 33 was overruled. It was admitted but not for
19 the matter asserted.

20 MR. ROCHE: That matches I think what we have as
21 well, Your Honor. Thank you.

22 BY MR. ROCHE:

23 Q Mr. Nolan before, you testified earlier that Mr.
24 Mashinsky told you that KeyFi's activities were profitable?

25 A Yes.

1 Q Mr. Mashinsky told you that KeyFi's activities were the
2 most profitable trading strategy?

3 A I don't recall if he said that it was the most
4 profitable.

5 Q It was very profitable?

6 A I believe he referred to it as profitable. I don't
7 know to what extent.

8 Q Okay I'm going to hand you exhibit -- it's been marked
9 as Defendant's Exhibit 3.

10 A Thank you.

11 Q Mr. Nolan, do you recognize this document?

12 A Yes.

13 Q What is this document?

14 A I Believe it's a Slack communication between myself and
15 Harumi Urata-Thompson.

16 Q The CFO of Celsius?

17 A Yes.

18 Q I want to go to the bottom of the first page. Harumi
19 Urata-Thompson says -- and I'm looking at the message sent
20 on 2021 0107 at 1:40:17. Do you see where I'm looking?

21 A Yes, I believe so.

22 Q Miss Thompson says "As a starter, I was never keen on
23 moving forward with KeyFi and it is these idiots who forced
24 me, no matter what kind of alarming discoveries I convey to
25 them, how many times do they do this kind of thing?" And

1 the next line, Mr. Nolan you respond, the very next message,
2 "I disagree with not moving forward with KeyFi, but it's not
3 my call." Do you see that line?

4 A Yes, I do.

5 Q You wanted to move forward with KeyFi because at this
6 time you believed KeyFi was highly profitable?

7 A Yes. At this point in time, I thought KeyFi was
8 profitable.

9 Q And that understanding was based on conversations you
10 had with Mr. Mashinsky?

11 A Conversations I had with Mr. Stone as well as things
12 that Mr. Mashinsky had communicated.

13 Q Did Mr. Mashinsky ever pressure you to work with KeyFi?

14 A Yes.

15 Q He would pressure you to do more deployments through
16 KeyFi?

17 A Yes, he often made it known that he thought that more
18 deployments should be allocated to KeyFi.

19 Q And he pressured you to do that?

20 A Actually, I don't know if I would use the term
21 "pressured," but it was strongly conveyed.

22 Q Okay. Would it surprise you if you said at your
23 deposition that he pressured you to work with KeyFi?

24 A No, it wouldn't surprise me.

25 Q You understood from Mr. Mashinsky that KeyFi was the

1 most profitable trading strategy at Celsius?

2 A Again, I'm not sure if it was most profitable but I
3 believe it was communicated as profitable.

4 Q Do you remember testifying to something different at
5 your deposition?

6 A No, I don't recall.

7 MR. ROCHE: Your Honor, may I approach the witness
8 and hand him a copy of his December 20th, 2022 deposition?

9 THE COURT: Yes.

10 MR. ROCHE: And I have that marked. Okay. Do you
11 have a copy, Your Honor?

12 THE COURT: No.

13 MR. ROCHE: I believe it was sent to your chambers
14 under the impeachment exhibits at DX 55.

15 THE COURT: All right. Just give me a second and
16 I'll get it. I have them on my computer.

17 THE WITNESS: Thank you.

18 MAN 1: I'd like to note before we start again,
19 it's maybe a glitch with the (indiscernible).

20 MR. ROCHE: Your Honor, would you like us to email
21 it to you?

22 CLERK: Judge? I think you're muted. Let me --
23 I'm asking you to unmute.

24 THE COURT: All right. I'm unmuted now. I'm
25 sorry. My line was muted and I couldn't, it wouldn't

1 unmute. I have it open in front of me. Go ahead, Mr.

2 Roche.

3 BY MR. ROCHE:

4 Q Mr. Nolan, you have in front of you a copy of your
5 December 20th, 2022 deposition. I'm going to you to turn to
6 Page 100.

7 A Yes. One moment.

8 Q It's Page 26 of the pdf. It's four pages per --

9 A Got it. I have it open.

10 Q And I want to direct your attention to Lines 24 through

11 17. You state -- I asked you: "Were there any other

12 profitable trading strategies that Celsius was involved in

13 in 2020? Your answer: Yes, if I recall correctly. I asked

14 you: Was it your understanding that KeyFi was the most

15 profitable? Answer: I don't recall? Is it possible that

16 was your understanding that KeyFi was the most profitable?

17 Answer: From the information shared by Jason, yes. What

18 about the information shared by Mr. Mashinsky? It often

19 mirrored the same information." Does that reflect your

20 information on whether or not Mr. Mashinsky told you that

21 KeyFi was the most profitable trading strategy at Celsius?

22 A I don't think anything I said there's relates to most

23 profitable. I don't recall it being discussed as most

24 profitable.

25 Q Okay. You can move on. You can set that aside for

1 now.

2 A Thank you.

3 Q Mr. Mashinsky -- Mr. Mashinsky would bad mouth other
4 Celsius employees to prop up Mr. Stone?

5 A Sorry, can you repeat that?

6 Q Would Mr. Mashinsky bad mouth other employees to prop
7 up Mr. Stone?

8 A Sometimes, yes.

9 Q Okay. I want to hand you what's been previously marked
10 as Defendant's Exhibit 4.

11 A Thank you.

12 Q Do you recognize this document?

13 A Yes.

14 Q What is this document?

15 A It seems to be another Slack communication between
16 myself and Harumi Urata-Thompson.

17 Q Okay. If you could go to the second page of the
18 document. And I'm looking at January 27th, 2021 at 2:55.
19 You see there's a couple of messages there. Yes, the first
20 one that begins from Miss Thompson: "Yes, because Jason
21 already has about 10 percent to begin with and is borrowing
22 another 150 million or so if I saw it last right. Do you
23 see that message?

24 A Yes, I do.

25 Q Is your understanding that Miss Thompson is saying that

1 KeyFi is managing 10 percent of Celsius assets?

2 A Yes, I believe so.

3 Q Okay. And if you scroll down to a message from 2:59

4 PM, you right -- and let me just see if there's more,

5 there's just one message. "I understand that, but for now

6 we have millions of dollars in coins doing nothing. AUM is

7 growing too fast for us not to send coins wherever we can

8 do." Do you see that?

9 A Yes, I do.

10 Q What you're referring to here was the fact that the

11 inflows of user assets into Celsius were outpacing the rate

12 at which they could be deployed?

13 A Yes.

14 Q And it was necessary for you to deploy customer assets

15 quickly because Celsius needed to generate yields on those

16 assets that were being paid to users?

17 A Yes.

18 Q Mr. Nolan, do you know what impermanent loss is?

19 A Yes, I do.

20 Q Can you please describe for the court what impermanent

21 loss is?

22 A So impermanent loss can occur predominantly during

23 deployments into liquidity pools that can cause losses to

24 occur when the price of one asset fluctuates against the

25 other price, the price of the other asset within those

1 pools.

2 Q Do you recall whether or not Celsius had any written
3 policies confirming, concerning impermanent loss in DeFi
4 deployments in 2020?

5 A I can't recall.

6 Q Even though Celsius was deploying hundreds of millions
7 of dollars into DeFi in 2020?

8 A Well, there were, I believe, some risk parameters
9 within place. I just don't know if there was written,
10 expressed documentation around them. I can't recall that.

11 Q Okay. Mr. Mashinsky would pressure you to do more
12 deployments though through KeyFi, correct?

13 A As I said, I'm not sure if pressure is the term, but he
14 advocated for more deployments via KeyFi, yes.

15 Q Did Celsius ever sell customer Bitcoin deposits?

16 MR. CHAPMAN: Objection.

17 THE COURT: Overruled.

18 BY MR. ROCHE:

19 A I don't know exactly if it was within a trading
20 strategy perhaps.

21 Q Do you recall giving a different answer at your
22 deposition?

23 A I don't recall what my answer was.

24 Q Okay. Let's go to Page 124 of your deposition. And
25 I'm looking at Lines 9 through 11.

1 A Yes, I see that.

2 Q "Question: So did Celsius ever sell let's say customers
3 Bitcoin, customers customer Bitcoin? Answer: I believe,
4 yes." Do you have any reason to believe that wasn't
5 accurate when you testified to that?

6 A No, I believe that's accurate. Yes.

7 Q Did Celsius ever sell customer Ethereum deposits?

8 A I believe so, but not exactly sure.

9 Q Did Celsius ever use its customers stablecoin deposits
10 to buy other cryptocurrencies?

11 A Yes, I believe so.

12 Q Did Celsius ever use its customer deposits to short the
13 price of Bitcoin?

14 A That I'm not sure.

15 Q You could go to lines -- Page 126 of your deposition.

16 A Yep, I'm there.

17 Q Line 6 through 8. "Question: Did Celsius ever short
18 Bitcoin? Answer: I can't recall exactly, but I believe so."
19 Was that answer correct?

20 A Yes, I can't recall exactly, but I believe it may have
21 occurred. Yes.

22 Q You believe that Celsius may have shorted the price of
23 Bitcoin with customer assets?

24 A Yes.

25 Q Did Celsius ever use its customer deposits to short the

1 price of Ethereum?

2 A I mean, I'm not exactly sure, but I believe so. Yes.

3 Q Did Celsius ever use its customer deposits to buy up
4 the CEL token?

5 A Yes.

6 MR. CHAPMAN: Objection.

7 THE COURT: Overruled.

8 BY MR. ROCHE:

9 Q Did Celsius ever use its customer deposits to buy up
10 the CEL token?

11 A Yes, I believe so.

12 Q And in doing so, did that prop up the price of the CEL
13 token?

14 A I believe so. But it was part of the strategy around
15 the CEL token.

16 Q Okay. Did Mr. Mashinsky direct these trades?

17 A No. He didn't direct them.

18 Q Did Celsius ever engage in any hedges for its trading
19 activities?

20 A Yes.

21 Q So Celsius was capable of hedging against price
22 movements in the cryptocurrencies it was deploying?

23 A Well, it would depend upon the strategy and the hedge,
24 but yes.

25 Q All right. I want to switch gears for a second. Did

1 anyone at Celsius ever communicate that it would use a
2 program called HedgeGuard to monitor KeyFi's activities?

3 A Yes, I believe that was discussed.

4 Q And Celsius implemented HedgeGuard to monitor KeyFi's
5 activities?

6 A I don't know if it was ever implemented. I know it was
7 being discussed for tracking of coin purposes.

8 Q Do you remember giving a different answer at your
9 deposition?

10 A No, I don't recall.

11 Q If we could go to Page 135 of your deposition. Tell me
12 when you're there.

13 A I'm there.

14 Q If we could go to the bottom of Page 135. "Question:
15 Do you know if Celsius ever implemented HedgeGuard for
16 purposes of monitoring KeyFi's accounts? Answer: I believe
17 so." Do you have any reason to believe that answer wasn't
18 accurate when you gave it?

19 A No. No reason to believe so.

20 MR. CHAPMAN: I'm sorry. Can you just direct me
21 to what line you just read?

22 MR. ROCHE: 135, 24 through 136, 3.

23 BY MR. ROCHE:

24 Q So with HedgeGuard, Celsius was able to monitor the
25 performance of Celsius KeyFi's DeFi wallets?

1 A I'm not sure.

2 Q Okay. Mr. Mashinsky frequently praised Mr. Stone?

3 A Yes, I believe so.

4 Q Mr. Mashinsky praised KeyFi for being profitable and
5 for being on the forefront of DeFi deployments?

6 A Yes, I believe at the time.

7 Q You're familiar with a program called DeBank.

8 A Yes, I am.

9 Q Mr. Mashinsky and Miss Thompson showed printouts of
10 DeBank to demonstrate profitability at team meetings,
11 correct?

12 A I believe so if I recall correctly.

13 Q Do you know what an NFT is?

14 A Yes.

15 Q Describe for the court what an NFT is.

16 A NFT is a nonfungible token that exists on the
17 blockchain that could be related to a lot of different
18 things from pictures to art, et cetera.

19 Q And you discussed NFT purchases with Mr. Stone?

20 A Yes, I did.

21 Q You discussed Mr. Stone's NFT's purchases prior to his
22 departure from Celsius?

23 A Yes.

24 Q And you knew that Mr. Stone created a Twitter profile
25 called OXB-1?

1 A Yes. He told me about it.

2 Q Have you ever looked at the Twitter profile?

3 A Yes, I believe so.

4 Q And you knew about this Twitter profile prior to Mr.
5 Stone's departure from Celsius KeyFi?

6 A Yes, I believe so.

7 Q You discussed the OXB-1 Twitter account with Mr. Stone?

8 A Yes.

9 Q You discussed the OXB-1 Twitter account with Miss
10 Thompson, the CFO?

11 A Yes, I believe so.

12 Q And you discussed the OXB-1 Twitter account with Mr.
13 Mashinsky?

14 A That, I don't recall.

15 Q Did you discuss the OXB-1 account with Patrick Holert?

16 A That, I don't recall either.

17 Q The OXB-1 Twitter account was a fairly popular trading
18 account in late 2020 and early 2021?

19 A Yes, I believe so. It was pretty popular on Crypto
20 Twitter.

21 Q And you believe that the OXB-1 Twitter account was a
22 good thing for Celsius because it promoted engagement?

23 A Yeah, that's what I believed at the time.

24 Q Mr. Nolan, do you know what a CryptoPunk is?

25 A Yes, I'm aware.

1 Q Can you tell the court what a CryptoPunk is?

2 A CryptoPunk is a specific NFT, one that was pretty early
3 on and is very popular.

4 Q And Mr. Stone and you discussed the purchase of
5 CryptoPunks prior to his departure from Celsius?

6 A I believe so.

7 Q You were aware that Mr. Stone purchased CryptoPunks
8 prior to his departure from Celsius?

9 A Yes, I believe so.

10 Q And you are aware that Mr. Stone purchased other NFTs
11 prior to his departure from Celsius?

12 A I believe so.

13 Q And you understood that Mr. Mashinsky sometimes paid
14 others in the form of NFTs, correct?

15 A No, that's not something I'm aware of.

16 Q Do you recall Mr. Mashinsky paying his wife in the form
17 of NFTs?

18 A I knew of ascending of an NFT. I didn't know what it
19 related to.

20 Q And you were on calls where it was discussed that
21 certain NFTs would be deducted from the profit payout owed
22 to KeyFi?

23 A Yes.

24 Q And these calls occurred prior to Mr. Stone's
25 departure?

1 A Yes. They were with Mr. Stone.

2 Q And he calls with Mr. Stone, he told you that the NFT
3 purchases were part of the profit sharing agreement between
4 KeyFi and Celsius?

5 A Yes, that's what he said.

6 Q And again, those calls occurred prior to Mr. Stone's
7 departure from Celsius?

8 A Yes.

9 Q Do you recall whether or not Mr. Mashinsky was on those
10 calls?

11 A No, I don't.

12 Q You don't recall one way or the other?

13 A I don't believe he was. Those calls only occurred
14 between myself and Mr. Stone.

15 Q Do you recall whether or not the NFT purchases were
16 discussed on the weekly calls?

17 A No, I don't believe so, but I can't recall exactly.

18 Q I want to discuss the circumstances leading up to Mr.
19 Stone's departure. Shortly before Mr. Stone's departure,
20 you communicated to Mr. Stone that Celsius had uncovered a
21 hole within its balance sheet?

22 MR. CHAPMAN: Objection.

23 BY MR. ROCHE:

24 Q And you understand that was part of the reason for his
25 departure?

1 MR. CHAPMAN: Objection.

2 THE COURT: Overruled.

3 BY MR. ROCHE:

4 A Sorry. Can you repeat the question?

5 Q Shortly before Mr. Stone's departure, you communicated
6 to Mr. Stone that Celsius had uncovered a whole within its
7 balance sheet and you understood that was part of the reason
8 for his departure?

9 A Yes.

10 Q And that was would have been early 2021?

11 A Yes, I believe so.

12 Q And this hole was there, the hole was there -- hold
13 one. Let me -- give me one moment. The hole was as a
14 result of a mismatch where the assets being held by Celsius
15 did not match the liabilities of what it owed back to the
16 community?

17 A Yes.

18 Q The Celsius community?

19 A Yes.

20 Q Meaning Celsius depositors.

21 A The community. I'm not sure about the term
22 "depositors."

23 Q You were involved in uncovering this hole?

24 A I don't believe I was involved in the exact uncovering
25 of it, but in the process of sort of piecing everything

1 together after the fact, yes.

2 Q Others at Celsius knew about this hole?

3 A Yes.

4 Q This hole related to an error in the manner in which
5 Celsius had been performing its accounting?

6 A I believe so off of my understanding but I don't know
7 the exact reasoning.

8 Q And this error was due to the fact that it was
9 performing its accounting in dollar basis as opposed to coin
10 basis?

11 A Yeah. I'm not sure the exact reasoning but that's a
12 possibility I guess.

13 MR. ROCHE: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, you may.

16 BY MR. ROCHE:

17 Q Here you go.

18 A Thank you.

19 Q Mr. Nolan, I handed you what's been marked as
20 Defendant's -- what's been previously admitted as
21 Defendant's Exhibit 5. Your Honor, let me know when you
22 have that exhibit handy.

23 THE COURT: Yes, go ahead.

24 BY MR. ROCHE:

25 Q Do you recognize this document?

1 A Yes.

2 Q What is it?

3 A I believe it's a Slack communication between myself and
4 Harumi Urata-Thompson.

5 Q Again, that's Celsius' CFO at the time?

6 A Yes. Oh, wait, sorry. At this point in time, I
7 believe Harumi was no longer CFO but I could be wrong about
8 that.

9 Q When do you believe Miss Harumi Urata-Thompson stopped
10 being the CFO of Celsius?

11 A I don't know the exact date offhand. I apologize.

12 Q No problem. Let's go to the bottom of the second page
13 and the top of the third page. Miss Thompson writes "I can
14 confirm with Jason that he's all set to go." And then on
15 the next page she writes "The rest of the calculation I will
16 have to do with the accounting and legal to figure out the
17 payout." Do you see the message I'm referring to?

18 A Sorry, I got a little lost because I think some of that
19 message wasn't said. But is that the end of the message?

20 Q The very end of the message.

21 A Yes, I see that last sentence.

22 Q And these messages are dated March 11th?

23 A Yes, I believe so.

24 Q This message was sent after Mr. Stone resigned?

25 A I believe so.

1 Q So your understanding is that as of the date of this
2 message, Miss Thompson believed that KeyFi was owed a profit
3 payout?

4 A I believe, I believe so.

5 Q Do you know whether or not Mr. Mashinsky was aware of
6 Mr. Stone's purchases of NFTs prior to Mr. Stone's
7 departure?

8 A No, I'm not aware.

9 Q Mr. Nolan, you testified that you had weekly meetings
10 with Mashinsky and the KeyFi team, that Mr. Stone and you
11 discussed his NFT purchases and that Mr. Stone broadcasted
12 his activity on the OXB-1 Twitter, but you can't recall
13 whether or not at any point in time prior to Mr. Stone's
14 departure, the NFT purchases were discussed with you and Mr.
15 Mashinsky?

16 A Sorry, I think the way you phrased that, the NFTs, to
17 my recollection, were not discussed in those weekly
18 meetings. So can you repeat the question?

19 Q You can't recall any conversations with Mr. Mashinsky
20 present where NFTs were discussed?

21 A Not that I can recall.

22 Q And you don't recall any discussions concerning Stone's
23 NFT purchases on the OXB-1 account besides your
24 conversations with Mr. Stone himself?

25 A No, I can't recall.

1 Q Mr. Nolan, I'd like to discuss very quickly some
2 testimony from earlier. Celsius deployed funds into DeFi
3 itself in 2020?

4 A Yes.

5 Q There was one other person responsible for deploying
6 funds into DeFi in 2020?

7 A Sorry, I'm confused. For who?

8 Q Deployments that Celsius did itself.

9 A Other than myself, yes, there's one that I can recall
10 at this time.

11 Q Who was that?

12 A Assaf Aram.

13 Q Now I want to focus on the amount of customer funds you
14 deployed yourself into DeFi in 2020. You don't remember if
15 you deployed more than \$10 million in customer deposits in
16 DeFi in 2020?

17 A I believe that may have been the case but I don't
18 recall the exact figure.

19 Q You don't remember if you deployed more than \$100
20 million in customer deposits in DeFi in 2020?

21 A Sorry. When you say "you" here, do you mean myself or
22 do you mean Celsius?

23 Q You.

24 A Yeah, the answer is still I think that might be the
25 case, but I don't know the exact figure either way.

1 Q Let's discuss 2021. You don't remember if you deployed
2 more than \$10 million in customer deposits into DeFi in
3 2021?

4 A I would say I believe that that is the case but I don't
5 know the exact figure that was deployed offhand.

6 Q You don't remember if you deployed more than \$100
7 million in customer deposits in DeFi 2021?

8 A I believe that more than likely that was the case that
9 more than 100 million was deployed, but I don't remember the
10 exact figure at this time.

11 Q You can't recall if you deployed more than a billion
12 dollars in customer deposits into DeFi in 2021?

13 A I don't know the exact figure.

14 Q Okay. You don't, you can't recall if it was more than
15 a billion.

16 A Well, no, I can't recall the exact figure.

17 Q So you're telling this court that you can't recall the
18 amount of money you deployed -- whether or not the amount of
19 money you deployed into DeFi was under 10 million or over
20 one billion?

21 A Well, as I said, I believe it was over 10 million. I
22 just don't know the exact figure offhand right now.

23 Q Mr. Nolan, could you go to Page 85 of your deposition?
24 Tell me when you're there.

25 THE COURT: Give me a second to get there.

1 BY MR. ROCHE:

2 A I'm at Page 85.

3 Q Question --

4 THE COURT: Go ahead. I asked you to wait for me
5 to get to the page.

6 MR. ROCHE: Apologies.

7 THE COURT: Go ahead.

8 BY MR. ROCHE:

9 Q I'm looking at Lines 15 through 20. "Question: You
10 can't recall even a particular range. You don't know if
11 it's under 10 million. You don't know it's over a billion?
12 Answer: No, I don't recall."

13 THE COURT: Mr. Roche, that's not impeaching. Go
14 ahead.

15 BY MR. ROCHE:

16 Q Mr. Nolan, sitting here today, do you know whether or
17 not the amount of money you deployed into DeFi in 2021 was
18 over a billion or less than 10 million?

19 A Sorry, I'm a little confused about the wording there.
20 If it was over a billion or less than 10 million?

21 Q Correct.

22 A I believe that it was over 10 million, but I don't have
23 the exact figure. I'm not able to say whether it was over a
24 billion. I don't recall.

25 Q You said earlier that in 2021, you told Mr. Stone that

1 you became aware that Celsius' assets didn't match its
2 liabilities?

3 A Yes.

4 MR. ROCHE: I believe Your Honor has an objection.

5 THE COURT: I didn't hear it. What was the
6 objection?

7 MR. CHAPMAN: Objection, relevance.

8 THE COURT: Overruled.

9 BY MR. ROCHE:

10 Q Mr. Mashinsky made statements to the public that were
11 contrary to that, correct?

12 A I don't know what statements you're referring to.

13 Q Are you aware of any statements that Mr. Mashinsky made
14 to the public that were contrary to the fact that Celsius
15 didn't have enough assets on its on its books?

16 A I don't know of any exact statements.

17 Q Could you go to Page 172 of your deposition please?
18 Line 25.

19 A Sorry, which page?

20 Q Page 172.

21 A Yeah, I'm there.

22 MR. ROCHE: Your Honor, are you?

23 THE COURT: I'm with you. Go ahead.

24 BY MR. ROCHE:

25 Q Line 25. "Question: Are you aware of Mr. Mashinsky

1 making statements to the public that were contrary, to the
2 contrary? Answer: I believe so." Was that answer accurate
3 when you gave it?

4 A I'm not sure offhand. I can't recall of any exact
5 statements.

6 Q It's your understanding that Mr. Mashinsky made false
7 statements to the public between 2021 and 2022?

8 A I'm not sure.

9 Q Is it possible?

10 A Yes, it's possible.

11 THE COURT: Don't speculate.

12 MR. ROCHE: No further questions. Your Honor, can
13 you give me one minute here to confirm with my co-counsel?

14 THE COURT: Sure.

15 MR. ROCHE: One or two last questions, Your Honor.

16 THE COURT: Go ahead.

17 BY MR. ROCHE:

18 Q You testified earlier that you wouldn't, you wouldn't
19 say that Mr. Mashinsky pressured you to work with Jason?

20 A I just don't know if I would use that exact word, but
21 he was pretty forceful in wanting us to deploy more.

22 Q Okay, could you turn to page, do you remember at your
23 deposition agreeing that Mr. Mashinsky pressured you to work
24 with Jason?

25 A I don't recall that.

1 Q Could go to Page 99 of your deposition?

2 A I'm at Page 99.

3 MR. ROCHE: Your Honor?

4 THE COURT: I'm there too. What line number?

5 BY MR. ROCHE:

6 Q Line 16 through 18. "Did Mr. Mashinsky ever pressure
7 you to work with Jason. Answer: Yes."

8 A Yes, I see that.

9 Q Okay. And if you go to line 100 -- the next page, Page
10 100, "And he would pressure you to do more deployment
11 through KeyFi? Answer: Yes." Do you see that?

12 A Yes, I see that.

13 MR. ROCHE: No further questions.

14 THE COURT: All right. Redirect examination.

15 REDIRECT EXAMINATION OF CONNOR NOLAN

16 BY MR. CHAPMAN:

17 Q Okay, for the record, Dean Chapman, Akin, Gump,
18 Strauss, Hauer and Feld. It's a fair bit of ground covered
19 in that cross-ex, Mr. Nolan, so bear with me if I jump
20 around from topic to topic here on redirect. I want to
21 start with some questions that were asked towards the end --
22 by the way, redirect -- I don't know what we're calling this
23 Judge, cross-examination or redirect.

24 THE COURT: It's redirect. Go ahead.

25 BY MR. CHAPMAN:

1 Q You were asked questions, Mr. Nolan, regarding the
2 quantum of funds that Celsius deployed to its proprietary
3 DeFi investment strategy; is that correct?

4 A Yes.

5 Q And you couldn't remember -- if I understood your
6 testimony correctly, you thought it was in excess of \$10
7 million worth of coins but above that you didn't know what
8 the number was, correct?

9 A Yes.

10 Q Why is it that you can't put a precise dollar figure on
11 that?

12 A Well I would say that there are a couple of different
13 reasons, one being that it's a little bit hard without an
14 exact specific point in time. Also when it comes to saying
15 how much was deployed in say a year if funds are moved out
16 of one strategy and into another strategy, I'm not sure how
17 that's seen, as whether that's the amount that was deployed
18 or 2X because it was shifted around strategy to strategy and
19 just offhand, I don't know the exact number.

20 Q Okay. Got it. You were asking questions during cross-
21 examination, to the fact that you were supportive of Celsius
22 working with the defendants, correct?

23 A Yes.

24 Q When was that that you were supportive?

25 A I believe that was in 2020 up until early 2021.

1 Q And there came a time when that view changed?

2 A Yes.

3 Q When was that?

4 A When it was determined that the deployments done by
5 KeyFi were not profitable.

6 Q And when was that determination made?

7 A I believe it was in March of 2021, but I don't know the
8 exact dates.

9 Q You also testified you thought it was good for Celsius
10 that the OXB-1 Twitter was popular. Right?

11 A Yes, at the time.

12 Q What time was that?

13 A In 2020 up until 2021 when it was deemed it wasn't
14 profitable.

15 Q You said you recall discussing the OXB-1 Twitter with
16 Miss Urata-Thompson; is that correct?

17 A Yes, that's correct.

18 Q And what did you and Miss Urata-Thompson discuss?

19 A She was a bit unhappy with the Twitter account if I
20 recall correctly.

21 Q Do you have an understanding as to why she was unhappy?

22 A I believe she just didn't want it to become the focal
23 point or to be broadcasted around the proprietary, the
24 deployments that were being done by Celsius.

25 Q Okay. Got it. Okay. Do you recall being asked

1 questions about the work you did sending coins from Celsius
2 to defendants, is that correct?

3 A Yes, I believe so.

4 Q And what was your responsibility in sending the coins?

5 A So I would have access to Fireblocks, Celsius' primary
6 custodian. And if coins were available to be deployed, they
7 would often be housed within Fireblocks and then they would
8 be sent from there to wallets that were controlled by KeyFi.

9 Q Okay. And from there, am I correct, that defendants
10 would deploy the coins into DeFi investment strategies?

11 A Yes, that's correct.

12 Q What responsibility do you have with respect to
13 defendants deployment of coins into DeFi investment
14 strategies?

15 A No responsibilities. I was only involved in those
16 weekly discussions around the deployments.

17 Q Was it your responsibility to track defendants
18 deployments of coins into DeFi?

19 A No.

20 Q Would it have been possible for you to track defendants
21 deployment of coins into DeFi?

22 A No.

23 Q Why not?

24 A Because Celsius didn't have a way to look in and see
25 all of the deployments that were being made by KeyFi and

1 therefore track where all the coins were.

2 Q You understood that such a program was supposed to be
3 developed at some point in time?

4 A Yes.

5 Q By whom?

6 A KeyFi.

7 Q And how do you know that?

8 A I was told that by Mr. Stone and the KeyFi team.

9 Q You ask questions about an application called DeBank,
10 is that correct?

11 A Yes.

12 Q Can you tell the court what DeBank is?

13 A DeBank is a website or protocol where one can look up
14 an address within the Ethereum ecosystem and see some of the
15 relevant deployments that are shown there and some of the
16 other features of the wallet.

17 Q Could you have used DeBank to track defendants
18 investments into DeFi strategies?

19 A Yes, some of them.

20 Q When you say some, what do you mean?

21 A I mean that for the protocols that were supported on
22 DeBank at the time, it would show those deployments, but if
23 a protocol was not linked into the DeBank ecosystem or I'm
24 not sure exactly how it works, but some of the protocols
25 would not show up on DeBank or show the amounts that were

1 deployed there.

2 Q And would the DeBank allow you to understand if a
3 particular investment strategy had been profitable or not?

4 A No.

5 Q And why is that?

6 A Because the bank only shows the current active balance
7 that was deployed within one of those protocols if that
8 protocol was supported by DeBank, but it wouldn't show
9 whether there was profit or loss within that deployment. It
10 would just show a snapshot as of a point in time.

11 Q Understood. I want to ask you some questions now about
12 hedging. What is your understanding as to whose
13 responsibility it was to hedge against KeyFi's centralized
14 finance positions?

15 A It was my understanding it was KeyFi's.

16 Q And would it have been possible for Celsius to hedge
17 against defendants DeFi positions?

18 A No, I don't believe so.

19 Q Why is that?

20 A Because without insight into all of the deployments and
21 without a means to see those deployments within real time,
22 it would be impossible to properly hedge those deployments.

23 Q You were asked questions on cross about something
24 called HedgeGuard?

25 A Correct.

1 Q And what is HedgeGuard.

2 A It's my understanding HedgeGuard was an -- excuse me --
3 an accounting software that was utilized by Celsius to show
4 their balances and be able to pull in information from --
5 excuse me, I need to take a second, apologies. Can you ask
6 the question again?

7 Q Sure. What is HedgeGuard?

8 A Yeah. So it was my understanding that HedgeGuard was
9 an accounting tool used by Celsius in order to track where
10 assets were across a few different places from internal
11 firebox wallets to exchange wallets, et cetera.

12 Q So to your knowledge, it was an accounting tool. Is
13 that what you said?

14 A As best as I can recall, yes.

15 Q Could it be used to hedge against investment positions?

16 A Not that I'm aware of or can recall.

17 Q Okay. To your knowledge, could Celsius have used the
18 HedgeGuard program to hedge against defendants DeFi's
19 investments?

20 A I don't believe so.

21 Q You were also asked questions on cross-examination
22 about Celsius's internal or proprietary DeFi investments?

23 A Correct.

24 Q And you had some responsibility for those investments?

25 A Apologies. Yes, I did.

1 Q Okay. And I believe you testified to this, but if not,
2 please remind the court, did Celsius have risk parameters in
3 place for its proprietary DeFi investments?

4 A Yes. There were some risk parameters in place.

5 Q What were those?

6 A They varied over time, but the largest of which when it
7 came to impermanent loss was setting of bans for either
8 taking out or replacing deployments depending on the price
9 fluctuation of assets.

10 Q And who was responsible for making sure that Celsius
11 proprietary DeFi trades complied with those bans that were
12 set?

13 A Whoever was in charge of the specific deployment.

14 Q Okay. And that included you at times?

15 A Yes.

16 Q And why was it that the person who was in charge of the
17 particular deployment was also in charge of complying with
18 the bans that had been set?

19 A They were the only person that would have access to the
20 deployment and real-time view to either pull out or add back
21 in that deployment.

22 Q Okay. I'm going to switch up topics quickly. You
23 testified on cross-examination to your understanding that
24 defendants trading activities were profitable. Right?

25 A Yes.

1 Q When in time did you believe that to be the case?

2 A I believed that to be the case until it was determined
3 that the deployments weren't profitable in early 2021.

4 Q Okay. And -- withdrawn. What was the basis for your
5 belief that the defendant's investment strategies were
6 profitable during the time when you held that belief?

7 A It was information that came from KeyFi and some
8 others.

9 Q Okay, so let's break that down. When you say KeyFi,
10 who are you referring to?

11 A I'm referring to Mr. Stone.

12 Q Okay. Did Mr. Stone provide you with evidence of the
13 profitability of KeyFi's trading?

14 A No, not that I can recall, just would share like
15 screenshots or showing of certain deployments, but that
16 doesn't show profitability.

17 Q Okay. You said your understanding of KeyFi's
18 profitability was based on things you were told by others as
19 well?

20 A Yes.

21 Q And who were those others?

22 A Mr. Mashinsky and I believe I may have had
23 conversations with Ms. Urata-Thompson about it, but I don't,
24 I don't recall.

25 Q What is your recollection of those conversations with

1 Miss Urata-Thompson?

2 A I just remember that when she would refer to there
3 being profitability or I would refer to there being
4 profitability, she would say yes, but we don't have enough
5 information to know that for sure or things of that nature.

6 Q Do you remember the time period when you had those
7 conversations?

8 A I don't recall exactly.

9 Q Do you recall those conversations were before or after
10 Mr. Stone resigned?

11 A I believe they were before.

12 Q Okay. And you also said Mr. Mashinsky was a source of
13 your understanding at one point in time that the defendant's
14 trading activities were profitable?

15 A Yes.

16 Q And what did Mr. Mashinsky tell you?

17 A He would often give similar summaries to what I heard
18 from Mr. Stone about the deployments that were being done
19 and show DeBank, DeBank information of the deployments.

20 Q What do you mean by similar summaries?

21 A So he would usually tell me similar information or the
22 same information that that Mr. Stone and said if I recall
23 correctly.

24 Q So it was your understanding that when Mr. Mashinsky
25 told you that he thought defendants' DeFi investment

1 strategies were profitable, he was repeating back
2 information that was provided to him by Mr. Stone?

3 MR. ROCHE: Objection, leading.

4 THE COURT: Sustained.

5 BY MR. CHAPMAN:

6 Q What is the basis for your -- what is your
7 understanding of why Mr. Mashinsky believed defendants
8 trading activities were profitable?

9 A I believe that that information came from KeyFi and Mr.
10 Stone.

11 Q When did you come to that belief?

12 A I remember making note of the information that Alex
13 shared was often in line with what I had heard from Jason,
14 but I don't remember when that, when that occurred.

15 Q Recently or?

16 A No, that was at the time in I believe late 2020, early
17 2021.

18 Q Are you aware of defendants ever providing
19 documentation to either Mr. Mashinsky or Miss Urata-Thompson
20 concerning the alleged profitability of defendants trading?

21 A No, not that I'm aware.

22 Q You were asked, I think a few different times, about
23 being pressured, about Mr. Mashinsky pressuring you to work
24 with KeyFi, correct?

25 A Sorry, can you repeat that?

1 Q On cross-examination, you were asked about Mr.

2 Mashinsky allegedly pressuring you to work with KeyFi,

3 right?

4 A Yes.

5 Q And do you have an understanding as to why Mr.

6 Mashinsky wanted you to keep working with KeyFi?

7 A Yes, it was my understanding that it was the perceived

8 profitability and the need to deploy coins.

9 Q And what time frame was this?

10 A That was in late 2020 and early 2021 I believe.

11 Q And at some point in time, did that pressure no longer

12 be in existence?

13 A Sorry can you repeat that?

14 Q When -- did Mr. Mashinsky ever stop pressuring you to

15 work with defendants?

16 A Again, I'm not 100 percent he used the word "pressure,"

17 but in the way that he was telling us to deploy with the

18 defendants, yes, it stopped when the relationship stopped.

19 Q Do you know why the relationship stopped?

20 A Yes. It's my understanding that KeyFi sent a

21 resignation or ending of the relationship.

22 MR. CHAPMAN: Judge, anything further from you?

23 THE COURT: No.

24 BY MR. CHAPMAN:

25 Q Mr. Nolan, you testified that you were on calls where

1 it was discussed that certain NFT purchases would be
2 deducted from the profit payout owed to KeyFi, right?

3 A Yes.

4 Q And who was on those calls?

5 A Mr. Stone.

6 Q Anyone else?

7 A Not that I can recall.

8 Q Apart from those calls with Mr. Stone, did you ever
9 discuss with anyone NFTs being an advance on profit share?

10 A I'm not sure, but not that I can recall.

11 Q Are you aware of any communications, written or oral,
12 in which Mr. Mashinsky authorized Mr. Stone or KeyFi to take
13 an advance on profit share?

14 A Not that I can recall.

15 Q Are you aware of any communications, written or oral,
16 in which Alex Mashinsky authorized the purchase of NFTs by
17 defendants?

18 A Not that I can recall.

19 Q All right, Mr. Nolan, I'd like to read you a few
20 questions and answers from Mr. Stone's deposition and ask
21 you a few questions about the exchanges. I will just read
22 the questions aloud. If you have any questions,
23 misunderstanding me, let me know.

24 MR. ROCHE: Dean, can you just wait for me to pull
25 up?

1 MR. CHAPMAN: Absolutely.

2 MR. ROCHE: Thank you.

3 MR. CHAPMAN: And I'm going to start on Page 49.

4 MR. ROCHE: Okay. What line?

5 MR. CHAPMAN: 49, 19.

6 MR. ROCHE: Okay, you can go.

7 BY MR. CHAPMAN:

8 Q Okay. And this this Q/A relates to Mr. Stone's claim
9 about Mr. Mashinsky authorizing him to take assets. Okay.
10 "Question: And you're saying the emails you are referring to
11 were sent by Alex Mashinsky to you? Answer: "--

12 MR. ROCHE: Objection, real completeness. I don't
13 think this question and answer gives the context for what is
14 being asked.

15 MR. CHAPMAN: I'm going to continue reading for
16 about a page.

17 THE COURT: Go ahead. So the objection is
18 overruled. Go ahead and read the entire page.

19 BY MR. CHAPMAN:

20 Q Okay. The answer is: "I honestly can't recall. It
21 would either be from Alex to me or for me to Alex, but it
22 also wouldn't be something specifically saying, Jason take
23 this. It was, hey, something more like, hey, Alex, I'm
24 doing, I'm, you know, I'm doing a \$50,000 transfer or some
25 odd dollar amount of transfer. You know, please acknowledge

1 or something like that. Question: Okay, got it. To your
2 recollection, I know you're saying you don't have the
3 emails, but to your recollection, was there anybody copied
4 on those emails or addressed on those emails other than you
5 and Alex? Answer: I do believe that either Connor Nolan or
6 Harumi Urata-Thompson may or may not have been CC'd on some
7 of those emails." Mr. Nolan, do you ever recall being
8 copied on an email of the sort described by Mr. Stone?

9 A Not that I can recall.

10 Q And then going down on that same page of the transcript
11 going to Page 50, Line 22. "Question: For the in person or
12 telephonic authorizations, was anyone else present when Mr.
13 Mashinsky gave the authorizations you are referring to?
14 Answer: I don't believe for the very first time, but for
15 subsequent times, a combination of Connor Nolan and/or
16 Harumi Urata-Thompson were on the phone at least one of the
17 times he authorized me to do so." Mr. Nolan, do you recall
18 ever being involved in a conversation in which Mr. Mashinsky
19 authorized Mr. Stone to take any sort of advance on profit
20 share?

21 A No, not that I recall.

22 Q I'm going to move to Page 58 of the transcript,
23 starting at Line 10. Okay. Page 58, Line 10 "Question: By
24 March 9th, which is the date you signed your resignation
25 letter, you thought KeyFi's profits were as much as 145

1 million. Is that what you said? Answer: KeyFi's profit
2 share amount. Question: Profit share? Answer: Owed to
3 them. Question: Right. And so what does that mean in terms
4 of your understanding of how much property you are
5 authorized to take from Celsius as of March 9th, 2021?
6 Answer: 10 to 20 percent, but I said 10 to 15 percent before
7 and then never change that. Question: 10 to 15 percent of
8 145 million? Answer: I believe so, yes. Question: Okay and
9 what was that authorization provided -- and was that
10 authorization provided to you in writing at any time other
11 than with respect to the one or two emails you identified
12 before? Answer: I do believe that in WhatsApp and text
13 messages between myself and Mashinsky, between myself and
14 Roni Cohen-Pavon, between myself and Harumi Urata-Thompson,
15 and then in discussions with myself and Connor Nolan, yes."
16 Okay. So my question Mr. Nolan, do you recall any such
17 discussions in which Mr. Stone -- with Mr. Stone regarding
18 him being advanced to take a certain portion of KeyFi's
19 alleged profit share as an advance?
20 A Other than the ones we discussed earlier about the NFT
21 purchases, not that I recall exactly. I do remember having
22 conversations with Mr. Stone about -- I don't remember exact
23 amounts, but his perceived thoughts on what amounts he
24 thought he was owed.
25 Q Okay. And the last one of these I'd like to do is at

1 Page 75 of the transcript beginning at Line 24. "Question:
2 Can you identify any written communication in which anyone
3 at Celsius ever told you Celsius was hedging against
4 impermanent loss from Celsius KeyFi activities? Answer: I
5 can't identify a specific document at this time. Question:
6 Do you have reason to believe that such a document exists?
7 Answer: Yes, absolutely. Question: In what form. Answer:
8 Probably an email or WhatsApp message. Question: Who at
9 Celsius gave the assurances you are referring to? Just
10 names. That's all I'm looking for. Question: Patrick
11 Holert primarily. And then I believe at different points in
12 time, Alex Mashinsky himself. Connor Nolan made mentions of
13 hedging, Waseem Shabout. I'm not sure if anyone else." Mr.
14 Nolan, do you recall making mention to Mr. Stone that you or
15 anyone at Celsius was hedging against impermanent loss from
16 Celsius KeyFi activities?

17 A No.

18 THE COURT: Could you could you elaborate on that?
19 I'm not sure I understand the answer.

20 THE WITNESS: No I don't recall that there were
21 any communications around Celsius hedging on behalf of
22 Celsius KeyFi.

23 THE COURT: Thank you.

24 MR. CHAPMAN: All right. Nothing, nothing
25 further.

1 THE COURT: Very good. Any further examination?

2 MR. ROCHE: No further examination from the
3 defendants.

4 THE COURT: All right. You're excused. Thank
5 you.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you very much for your
8 testimony. Mr. Roche, call you next witness.

9 MR. ROCHE: Your Honor, may we take a 5 to 10
10 minute break to use the restroom and get the exhibits ready
11 so that we can move right into --

12 THE COURT: Sure. We'll resume at 20 minutes to
13 three.

14 MR. ROCHE: Thank you, Your Honor.

15 (Off the record.)

16 CLERK: All right. The recording has started.
17 Yeah, Pedro, Pedro for some reason, the 0020112 line is
18 muted.

19 MR. ROCHE: Your Honor, can you hear us?

20 THE COURT: I can hear you, yes, I can.

21 MR. ROCHE: When you're ready, I believe the
22 witness is ready to be sworn in.

23 CLERK: You ready, Judge? Please raise your right
24 hand. Do you solemnly swear or affirm that all the
25 testimony you're about to give before this court is the

1 truth, the whole truth, and nothing but the truth?

2 MR. STONE: I do.

3 CLERK: Okay.

4 THE COURT: Good afternoon, Mr. Stone.

5 MR. STONE: Good afternoon, Judge.

6 CLERK: Please speak up.

7 MR. STONE: Good afternoon, Judge.

8 DIRECT EXAMINATION OF JASON STONE

9 BY KYLE ROCHE:

10 Q Mr. Stone, can you please state your full name?

11 A Jason Benjamin Stone.

12 Q Mr. Stone, what do you currently do for work?

13 A I'm a consultant in the cryptocurrency space.

14 Q When did you first become involved in the
15 cryptocurrency space?

16 A 2016.

17 Q And did there ever come a time you started a company in
18 the cryptocurrency space?

19 A Yes.

20 Q What was the name of that company?

21 A Battlestar Capital.

22 Q How does Battlestar Capital relate to, if it does, to
23 KeyFi?

24 A I would call KeyFi a successor company to Battlestar,
25 basically the IP of Battlestar was assigned to KeyFi in

1 exchange for a 10 percent stake in KeyFi going to the cap
2 table investors of Battlestar.

3 Q And was anybody affiliated with Celsius an investor in
4 either KeyFi or Battlestar?

5 A Yeah, Alex Mashinsky personally was an investor in
6 Battlestar. That investment rolled into an equity position
7 in KeyFi. And then Celsius Network, as well as Nuke
8 Goldstein, the CTO and cofounder of Celsius also
9 subsequently invested directly into KeyFi.

10 Q Did you submit a sworn affidavit in connection with
11 this, your opposition to plaintiff's motion?

12 A Yes.

13 MR. ROCHE: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, you can.

16 BY MR. ROCHE:

17 Q I'm handing you what's been marked as Defendant's
18 Exhibit 31. Do you recognize this document?

19 A Yes.

20 Q What is this document?

21 A My affidavit in opposition to the motion for the
22 preliminary injunction.

23 Q Are you aware of any inaccuracies as you sit here today
24 with respect to your sworn testimony as you submitted it in
25 this affidavit?

1 A I don't believe so, but I haven't reread it today.

2 MR. ROCHE: Your Honor, at this point in time, we
3 asked to move Defendant's Exhibit 31 into evidence.

4 THE COURT: Hearing no objection, it's admitted
5 into evidence.

6 (Defendant's Exhibit 31 admitted into evidence)

7 MR. ROCHE: Your Honor, we ask if we could, if
8 Your Honor reserved his ruling on a few of the exhibits.

9 THE COURT: I did.

10 MR. ROCHE: We'd like to, before cross-examination
11 begins, simply move those into the into the record through
12 Mr. Stone.

13 THE COURT: You can try.

14 MR. ROCHE: Okay.

15 BY MR. ROCHE:

16 Q Mr. Stone, Defendant's Exhibit --

17 THE COURT: Just bear with me a minute because
18 these are the additional exhibits. Right?

19 REPORTER: Yes.

20 THE COURT: I have to open it up on my computer.

21 All right. I've got that document open. Go ahead.

22 BY MR. ROCHE:

23 Q Mr. Stone, do you recognize Defendant's Exhibit 36.

24 A Yes.

25 Q What is it?

1 A It's a response to -- it's a response I made to a tweet
2 by someone else.

3 Q What's the date of your response?

4 A January 23rd, 2021.

5 Q And is your response in the middle of the page, OXB-1?

6 A Yes.

7 Q Were you the author of that tweet?

8 A Yes.

9 MR. ROCHE: Your Honor. We move to admit
10 Defendant's Exhibit 36 into evidence.

11 MR. HURLEY: Your Honor, the defendant, the
12 plaintiffs don't have a particular objection to this
13 document coming in.

14 THE COURT: It's admitted in evidence.

15 (Defendant's Exhibit 36 admitted into evidence)

16 BY MR. ROCHE:

17 Q Mr. Stone, when you say, "Put it on OpenSea then send
18 link," what are you referring to?

19 MR. HURLEY: Your Honor, the direct is supposed to
20 come in, we understood, through the affidavit, that there
21 wasn't going to be live direct. That was our understanding
22 of Your Honor's instruction and the party's agreement. So I
23 think it's -- the affidavit has been has been admitted and
24 would see the opportunity now to cross.

25 THE COURT: Well, these were additional exhibits

1 that have been provided. We had a discussion yesterday. I
2 said I would reserve ruling until the exhibits were offered.
3 This exhibit was offered. No objection was made. I will
4 permit brief examination with respect to the exhibit and
5 you'll be able to cross-examine. Go ahead, Mr. Roche.

6 BY MR. ROCHE:

7 A What did I mean? I meant for this person to list this
8 item on the OpenSea marketplace so that I could potentially
9 purchase it.

10 Q And is the item an NFT?

11 A not exactly. This item is a physical item that is
12 associated with an NFT. I'm not sure if there's a, if the
13 listing that he made was the NFT plus the physical or just
14 the physical. I guess looking at this now, it was for both
15 the physical and the digital version.

16 Q Of the NFT?

17 A Correct.

18 Q You can put that document aside.

19 MR. ROCHE: Okay. Your Honor, may I approach the
20 witness on Defendant's Exhibit 30?

21 THE COURT: Sure.

22 MR. ROCHE: Okay.

23 BY MR. ROCHE:

24 Q Mr. Stone, do you have Defendant's Exhibit 30 in front
25 of you?

1 A Yes.

2 Q What is Defendant's Exhibit 30?

3 A It's a tweet that I made on February 8th, 2021.

4 Q Were you still employed as the CEO of Celsius KeyFi at
5 the time?

6 A Yes.

7 MR. ROCHE: We move to admit Defendant's Exhibit
8 30 into evidence?

9 MR. HURLEY: Objection, relevance, hearsay.

10 THE COURT: Sustained.

11 MR. ROCHE: Your Honor, can I have a moment? Can
12 I ask a few more questions to establish the relevance here?

13 THE COURT: No. I sustained the objection. This
14 is hearsay. This is sustained. Ask your next question.
15 Not about this, the exhibit is not coming in.

16 MR. ROCHE: Understood. We're not offering that
17 exhibit for the truth of the matter asserted --

18 THE COURT: Mr. Roche, maybe you didn't understand
19 what I said. I tried to say it very clearly. The objection
20 sustained. Go on to your next question.

21 MR. ROCHE: Your Honor, I'm moving on to
22 Defendant's Exhibit 37.

23 BY MR. ROCHE:

24 Q Mr. Stone, do you recognize this document?

25 A Yes.

1 Q What is this document?

2 A I believe it's a printout of Etherscan -- of an
3 Etherscan link to the OXB-1 wallet.

4 Q And the OXB-1 wallet is the wallet you had control of
5 which to manage the deployment through KeyFi?

6 A That I shared control of with Celsius, yes.

7 MR. ROCHE: Your Honor, move to admit this
8 document into evidence and then a few brief questions on it.

9 MR. HURLEY: Objection, hearsay, and submitted
10 after the deadline.

11 THE COURT: Well hearsay, when you say that
12 control of this was shared with Celsius, explain what you
13 mean.

14 THE WITNESS: The OXB-1 wallet was originally
15 created by Celsius. They gave me access to it I think the
16 day after it was created and then two months later shared
17 the private keys with me to this wallet. And by having, by
18 both parties having the private key, that means that we both
19 have the same level of access and control over the funds in
20 that account.

21 THE COURT: Mr. Hurley, how does this differ from
22 the series of exhibits where there really originally were
23 objections and then they were withdrawn and they were
24 admitted? I'm looking -- I'm trying to look at them now. I
25 think Exhibit 15, 16, 17, the whole series of them.

1 MR. HURLEY: Your Honor, primarily in that our
2 exhibits were timely identified and the parties met and
3 conferred and reached an agreement.

4 THE COURT: If that's your objection, it's
5 overruled, and you agree, Mr. Hurley, that there's --
6 control of this document was shared with Celsius?

7 MR. HURLEY: Control of this document?

8 THE COURT: Yes.

9 MR. HURLEY: I thought you were asking about
10 control of the wallet. I'm sorry. Maybe I misunderstood
11 your question, Your Honor.

12 THE COURT: Let me ask the question again of the
13 witness. Explain whether Celsius -- who created this
14 document? Who had access to this document?

15 THE WITNESS: The document is just a printout from
16 the Etherscan website, so.

17 THE COURT: All right.

18 THE WITNESS: I'm not sure --

19 THE COURT: The objection is overruled. The
20 document is admitted in evidence. We're talking about
21 Exhibit 37. It's in evidence.

22 BY MR. ROCHE:

23 Q Mr. Stone, if you could go to -- give me a second to
24 navigate, page -- the sixth page of this document. I
25 believe there's multiple printouts of different displays of

1 the OXB-1 wallet.

2 A Yeah.

3 Q Are you at the page where it says non-fungible token
4 transfers at the top?

5 A Yes.

6 Q Okay.

7 THE COURT: I'm not, so hold on.

8 MR. ROCHE: It's page -- it would be Page 6 of the
9 PDF.

10 THE COURT: Okay, I'm there.

11 BY MR. ROCHE:

12 Q What does this page represent?

13 A This page represents the most recent transfers of ERC-
14 721 type NRTs in or out of the OXB-1 account.

15 Q And this information is public?

16 A Yes.

17 Q If you could go to the 11th page of the document?

18 Again, the top of it says non-fungible tokens, and there's a
19 series of transactions on that page, the oldest of which
20 occurred 733 days ago.

21 A Yeah.

22 THE COURT: I don't see --

23 MR. ROCHE: Your Honor, let me --

24 THE COURT: I don't see that.

25 MR. ROCHE: Page 11 of the PDF and there's --

1 THE COURT: Hold on, hold on. All right. Go
2 ahead.

3 BY MR. ROCHE:

4 Q What does this page represent?

5 A This page represents a list of the first couple NFTs --
6 acquired NFTs -- or the first couple of transactions in
7 which OXB-1 acquired NFTs.

8 Q And the first one is 733 days ago?

9 A For this specific account, yes.

10 Q And what -- approximately do you know what day of the
11 year that was?

12 A I don't.

13 MR. ROCHE: Your honor, I'd represent to the Court
14 that 733 days ago was January 5, 2021. And there's a series
15 of additional transactions that occurred 710 days ago. I'd
16 represent to the Court that occurred on January 28, 2021.

17 BY MR. ROCHE:

18 Q And Mr. Stone, what do these transactions represent?

19 A Which transactions?

20 Q The transactions on Page 11 of the PDF.

21 A They're the first set of incoming transfers of NFT-type
22 assets to the OXB-1 wallet.

23 Q And this information is publicly available?

24 A Yes.

25 MR. ROCHE: Your Honor, no further questions at

1 this time.

2 THE COURT: All right. Any further cross-
3 examination?

4 MR. HURLEY: Yes, Your Honor.

5 CROSS-EXAMINATION OF JASON STONE

6 BY MR. HURLEY:

7 Q Good afternoon, Mr. Stone. Mitch Hurley with Akin Gump
8 Strauss Hauer & Feld representing Celsius, and I'm going to
9 be asking you a few questions this afternoon. Let me just
10 start with Exhibit 37 that you were just handed, the
11 printout, and you were asked some questions about whether
12 the information is public, right? You have to answer
13 audibly.

14 A Yes.

15 Q You see there's a date in the upper left-hand corner of
16 this document?

17 A Yes.

18 Q And that's the print-out date for this document, right?

19 A I believe so.

20 Q And it says January 8, 2023, right?

21 A Correct.

22 Q This is not a printout from 700-plus days ago. This is
23 a printout from January 8, 2023, correct?

24 A I believe so.

25 MR. HURLEY: Okay. Your Honor, may I approach the

1 witness?

2 THE COURT: Yes, please, go ahead.

3 MR. ROCHE: Can I get another copy?

4 BY MR. HURLEY:

5 Q Mr. Stone, I've handed you a binder of documents, and
6 it's the binder of the exhibits that I planned to ask you
7 questions about this afternoon, though the first document in
8 the binder is actually just a copy of your affidavit. You
9 can just keep that near you, and I'll tell you the exhibit
10 numbers as we get to them, and we can start going through
11 them. Okay?

12 A Okay.

13 MR. HURLEY: Your Honor, I have a copy that I've
14 given to counsel for the defendants as well. I had a copy
15 for Your Honor ready to go but obviously cannot transmit it
16 to you. Yes, exactly.

17 THE COURT: Are these in your exhibits that have
18 already been admitted or are these impeachment exhibits?

19 MR. HURLEY: So, I believe these all have been
20 admitted, and as we come to them, if there's an objection,
21 obviously I'm sure Mr. Roche will not be shy.

22 MR. ROCHE: We'll make sure they're all admitted,
23 but assuming they're not (indiscernible) objection.

24 THE COURT: Okay, I've got both binders in front
25 of me and I've got the electronically -- exhibits opened as

1 well.

2 MR. HURLEY: Okay, and we need a copy of his
3 deposition as well. Yeah. If I could approach again, Your
4 Honor, I've got to give him a copy of the deposition as
5 well.

6 THE COURT: Sure. Go ahead.

7 MR. ROCHE: Can I have a copy as well?

8 BY MR. HURLEY:

9 Q Okay, Mr. Stone, I'd like to start by agreeing on some
10 terms so we make sure we're communicating with each other.
11 So, you're aware one of the plaintiffs in the case is
12 Celsius Network, Limited?

13 A Yes.

14 Q Okay. I'm going to try to refer to Celsius Network
15 Limited as either Celsius or Celsius Network today. Okay?

16 A Okay.

17 Q The other plaintiff is Celsius KeyFi, LLC, which I'm
18 going to try to refer to today as Celsius KeyFi, understood?

19 A Yeah.

20 Q And finally, one of the defendants is a company called
21 KeyFi, Inc., and that's the company that you're a part owner
22 of, right?

23 A Correct.

24 Q I'm going to try to refer to KeyFi, Inc. as either
25 KeyFi or KeyFi, Inc., okay?

1 A. Okay.

2 Q Could you turn to Paragraph 6 in your affidavit, sir?

3 A Paragraph -- Page 6 or paragraph?

4 Q Paragraph 6. The affidavit is --

5 A Oh, the affidavit, sorry.

6 Q Yeah, the affidavit, exactly.

7 A Yeah.

8 Q Okay. In Paragraph 6, you say that KeyFi and then
9 Celsius KeyFi managed Celsius assets continually from
10 September 2020 through March 2021. Do you see that?

11 A Yes.

12 Q And by managed, you mean at least that during the
13 relevant period KeyFi and then Celsius KeyFi deployed
14 Celsius assets in staking and DeFi activities, right?

15 A Yes. But there was never any specific paperwork that
16 said that the assets that Celsius gave us access to or
17 partial control over were necessarily being deployed by
18 KeyFi versus myself individually versus anything else I
19 think.

20 MR. HURLEY: Your Honor, I guess I've moved to
21 strike as nonresponsive.

22 THE COURT: Ask your next question.

23 MR. HURLEY: Okay.

24 BY MR. HURLEY:

25 Q So, KeyFi, your company KeyFi, actually began to manage

1 Celsius assets in August of 2020 not September, right? That
2 was just a mistake in the document?

3 A I believe so.

4 Q Right. And at the beginning, at the very least, it was
5 KeyFi, Inc., that was managing the assets, not Celsius
6 KeyFi, right?

7 A Yes, Celsius KeyFi didn't exist 'til later.

8 Q Right. And you own 38 percent of the equity in KeyFi?

9 A I believe that's correct.

10 Q You're the plurality largest owner of KeyFi, right?

11 A I believe so.

12 Q And during the period that KeyFi was managing Celsius
13 assets, you maintained operational control of KeyFi, right?

14 A Yes.

15 Q And you maintain operational control of KeyFi to this
16 day, right?

17 A I'm the -- I'm the -- no, I'm the CEO of the entity,
18 yes, but it's -- yeah.

19 Q Yes, you maintain operational control of KeyFi to this
20 day, right, sir?

21 A Yes.

22 Q Now, you're not sure when KeyFi's management of Celsius
23 assets ceased and when Celsius KeyFi's management began,
24 right?

25 A Correct.

1 Q You were the CEO of Celsius KeyFi for a period of time,
2 thought, right?

3 A Yes.

4 Q And according to Paragraph 21 of your declaration, your
5 affidavit, you informed Celsius that you would be resigning
6 as CEO of Celsius KeyFi in March of 2021, right?

7 A Yes.

8 Q And the communication that you're referring to in
9 Paragraph 21, that's an e-mail you sent on March 9, 2021,
10 right?

11 A Correct.

12 Q Would you turn to PX 42 in the binder, sir? And --

13 MR. ROCHE: I don't see it yet --

14 THE COURT: I see PX 41 and then it goes to PX 43.

15 MR. HURLEY: I think it's -- okay. It may be not
16 in your binder. We'll come back to that.

17 THE COURT: It's in my binder. Forty-two comes
18 after 41 and before 43.

19 MR. HURLEY: That's helpful, thank you. Okay.
20 May I approach, Your Honor?

21 THE COURT: Go ahead.

22 BY MR. HURLEY:

23 Q So, I've handed you a document marked PX 42, sir. And
24 do you recognize PX 42 as the March 9th e-mail that you sent
25 advising Celsius that you would be resigning as CEO of

1 Celsius KeyFi?

2 A Yes.

3 Q In Paragraph 5 of your November 28th declaration, you
4 identify certain agreements. Right?

5 A My November 28th declaration.

6 Q Paragraph 5.

7 A Yeah, okay.

8 Q And you reference, among others, the asset purchase
9 agreement or APA. Do you see that?

10 A Sorry, which paragraph?

11 Q Paragraph 5.

12 A Yes.

13 Q Okay. And you were not a party to that agreement,
14 right, the APA, you, Jason Stone?

15 A I don't recall. I don't believe so.

16 Q Okay. KeyFi is a party to that agreement, right?

17 A I believe so. Yes.

18 Q And that agreement closed on or around January 11,
19 2021?

20 A Yes, I believe so.

21 Q Okay. You also reference a service agreement in
22 Paragraph 5, but there were two documents labeled service
23 agreement that were -- parties were -- some of the parties
24 were party to in connection with their relationship, right?

25 A I think that one of them was called the inter-company

1 agreement and one of them was called the services agreement.

2 Q Well, let's take a look at PX 39, which is in your
3 binder.

4 A Yeah.

5 Q And PX 39 has -- is titled Celsius Network Limited
6 Services Agreement -- Service Agreement. Do you see that?

7 A Yes.

8 Q And it's dated October 7, 2020. Do you see that?

9 A Yes.

10 Q Please turn to the last page of the exhibit and tell me
11 if you recognize your signature on this document.

12 A I do.

13 Q Okay. And you're signing on behalf of KeyFi, Inc.,
14 right?

15 A Yes.

16 Q And if you turn back to Page 1, please, of the exhibit,
17 I want to direct your attention to Paragraph 1, term, okay?

18 A Yeah.

19 Q Tell me when you're there. You see it?

20 A Yeah.

21 Q Okay. And terms says the agreement shall begin on
22 August 17, 2020 and expire as of the date prior to closing
23 as described in the MOU. Do you see that?

24 A Yes.

25 Q And the MOU contemplated the possibility of an asset

1 purchase agreement, right?

2 MR. ROCHE: Objection, foundation.

3 THE COURT: Overruled.

4 THE WITNESS: I believe so, but I haven't seen the
5 MOU in a long time.

6 BY MR. HURLEY:

7 Q Okay. And the asset purchase agreement as we just
8 indicated or you just testified closed on or around January
9 11, 2021, right?

10 A Yes.

11 Q Okay. Direct your attention please to Paragraph 2. It
12 says services, and it's -- there's a typo. It says services
13 twice. Paragraph 2 provides KeyFi agrees that it shall
14 provide its expertise to Celsius for all things pertaining
15 to DeFi and staking services, and that's defined as the
16 services. Do you see that?

17 A Yes.

18 Q Okay. And in Paragraph 3, it's titled compensation.
19 Do you see that?

20 A Yes.

21 Q Okay. Paragraph 3 indicates what the compensation is
22 going to be. It says in consideration for the services. Do
23 you see that?

24 A Yes.

25 Q Okay. And it provides that Celsius shall pay KeyFi a

1 billed rate equal to 102,980.64 as a one-time payment for
2 services performed starting on August 17, 2020 through
3 September 30, 2020 within two business of days of this
4 agreement's effective date. Do you see that?

5 A Yes.

6 Q Okay. And that 102,980.64 was in fact paid by Celsius
7 to KeyFi, correct?

8 A Yes.

9 Q Okay. It goes on. In addition, commencing on the
10 effective date until the date of closing, Celsius shall pay
11 KeyFi a billed rate equal to \$31,875 on the 15th and last
12 day of each month services are performed. Do you see that?

13 A Yes.

14 Q So, that's about \$63,750 per month, right?

15 A Yes.

16 Q We already said no -- we already identified the
17 effective date was October 7, 2020, right?

18 A I believe so.

19 Q Right. And from October 7, 2020 to January 11th,
20 that's just a little over three months, right?

21 A I believe so.

22 Q Mm-hmm. So, the total billed --

23 THE COURT: You have to answer audibly yes or no
24 and not with a grunt.

25 THE WITNESS: Sorry, yes.

1 BY MR. HURLEY:

2 Q So, the total billed rate amount that would have been
3 due for that period would have been around \$190,000, right?

4 A I believe so.

5 Q And Celsius in fact paid KeyFi, Inc., that amount, did
6 it not, sir?

7 A It did.

8 Q Okay. Now, I direct your attention to the final
9 sentence of the same paragraph. It says KeyFi is not
10 entitled to any further consideration for the services
11 provided to Celsius. Do you see that?

12 A I do.

13 Q Can you go to -- actually, please turn to Paragraph 10.
14 Paragraph 10 is titled modification. You there?

15 A Yeah.

16 Q And it says no modification of this agreement shall be
17 valid unless in writing and agreed upon by both parties. Do
18 you see that?

19 A Yes.

20 Q Okay. Can we go to Plaintiff's Exhibit 37, please?

21 MR. ROCHE: (Indiscernible) binder.

22 MR. HURLEY: Thirty-seven's in there.

23 MR. ROCHE: Thirty-seven?

24 MR. HURLEY: It's in mine.

25 MR. ROCHE: (Indiscernible) apologies, yes.

1 BY MR. HURLEY:

2 Q Plaintiff's Exhibit 37. Actually, hold on. I think
3 I've directed you to the wrong document. Well, while we
4 have it open, Plaintiff's Exhibit 37 is called Memorandum of
5 Understanding. You see that?

6 A Yes.

7 Q Okay. And in fact it does contemplate -- the
8 Memorandum of Understanding contemplates an API -- APA being
9 closed by the parties, right? You see that in Paragraph 1?

10 A Yes.

11 Q Okay.

12 MR. HURLEY: Can I just have one moment, Your
13 Honor?

14 BY MR. HURLEY:

15 Q Let's go to Plaintiff's Exhibit 41, please, sir.

16 A Okay.

17 Q And Plaintiff's Exhibit 41 is a document titled Service
18 Agreement and it's dated December 31, 2020. Do you see
19 that?

20 A Yes.

21 Q Okay. This is the service agreement that you
22 referenced in Paragraph 5 of your November 28th declaration,
23 right?

24 A I'm not sure, but maybe.

25 Q Please turn to the fourth page of the document. It's

1 the signature page.

2 A Okay.

3 Q Do you recognize your signature on this document, sir?

4 A Not my typical DocuSign, but I do believe that's my
5 signature.

6 Q Mm-hmm. And it's signed Jason Stone as CEO of Celsius
7 KeyFi, LLC, right?

8 A Yes.

9 Q Okay. Please go to the 10th page of the exhibit which
10 is the actual DocuSign information. I think actually it's -
11 - our exhibits are numbered. So, it's PX 41-11 on the
12 bottom right.

13 A Okay. I'm there.

14 Q Okay. And you see next to your name, it indicates that
15 the document was signed on January 12, 2021. Do you see
16 that? And did you in fact sign this agreement on or around
17 January 12, 2021?

18 A I believe so.

19 Q Okay. Let's please go back to Page 1. And Page 1,
20 Paragraph 3 has a -- has a -- there's a paragraph called
21 Services. Do you see that?

22 A Yes.

23 Q And this paragraph defines services. The defining term
24 services is used to describe certain services that Celsius
25 KeyFi was to provide to Celsius Network. Right?

1 A I believe so.

2 Q And those services include the deployment of coins; is
3 that right?

4 A I believe so, yeah.

5 Q And in Paragraph 3 still, you see where it says with
6 respect to such services, all coins deployed by KeyFi -- and
7 by the way, KeyFi in this document refers to Celsius KeyFi,
8 right? Not your company, KeyFi, Inc.?

9 A Yes, I believe so.

10 Q Okay. See where it says with respect to such services,
11 all coins deployed by KeyFi and revenues generated and/or
12 received from third parties shall be owned by and paid to
13 Celsius or an affiliate of Celsius as determined by Celsius
14 excluding KeyFi? You see that?

15 A Yes.

16 Q And Celsius there is Celsius Network, right?

17 A I believe so.

18 Q Let's look at Paragraph 4, compensation. Paragraph 4
19 provides as a sole and exclusive compensation for the
20 services, Celsius shall pay KeyFi the consideration set
21 forth in Schedule B. Do you see that?

22 A I do.

23 Q And again, Celsius is Celsius Network and KeyFi is
24 Celsius KeyFi, right?

25 A Yes.

1 Q The plaintiffs in this case, correct?

2 A Yes.

3 Q Turn to Page 3, please. Actually --

4 THE COURT: Are you -- what -- are you referring
5 to 3 of 15? What is the page that you're --

6 MR. HURLEY: Apologies, Your Honor. Why don't I
7 give you the paragraph number instead? That will probably
8 be easier to get to.

9 THE COURT: That would be helpful, yes.

10 BY MR. HURLEY:

11 Q It's -- please turn to Paragraph 11 of the agreement,
12 Mr. Stone. It says waiver and modification.

13 A I'm there.

14 Q Okay. And do you see where it says no waiver or
15 modification of this agreement shall be valid unless in
16 writing agreed upon by the parties?

17 A Yes, I see that.

18 Q Okay. Are you aware that the parties stipulated in a
19 pre-trial order in this case that in early 2021 Celsius
20 instructed the defendants to return all of Celsius' digital
21 assets in the defendant's possession, custody or control?

22 A I am aware of that.

23 Q Okay, and that instruction was given to you in or
24 around January or February, right?

25 A Of what year?

1 Q 2021.

2 A No.

3 Q When was it given to you?

4 A I believe in late March.

5 Q Certainly later in March Celsius provided a written
6 demand for the return of its crypto assets, right?

7 A Yes.

8 Q And please go to Paragraph -- sorry, Plaintiff's
9 Exhibit 43.

10 A Okay.

11 Q Okay. Plaintiff's Exhibit 43 is a multi-page document.
12 The first page is an e-mail that is from
13 Roni@Celsius.Network to Jason Stone, and it says it was sent
14 on Friday, March 26, 2021. Do you see that?

15 A Yes.

16 Q Okay Give me one moment. You have an e-mail address
17 at the KeyFi domain?

18 A Yes.

19 Q Okay. And again, I'm talking about KeyFi, Inc., your
20 company, not Celsius KeyFi.

21 A Yes.

22 Q Okay. And what's your e-mail address on the KeyFi
23 domain?

24 A Jason@KeyFi.io.

25 Q Okay. And sir, did you in fact receive this e-mail

1 that is the first page of Plaintiff's Exhibit 43 on or
2 around March 26, 2021?

3 A Yes.

4 Q Okay. And do you know who Roni is?

5 A Yes.

6 Q Roni Cohen-Pavan you can see at the bottom?

7 A Yes. And he is a senior executive of Celsius, correct?

8 Q Yes.

9 Q And he was a senior executive of Celsius on March 26,
10 2021?

11 A I believe so.

12 Q And so, the e-mail encloses two documents, right?

13 There's a demand letter and then there's a document titled
14 Written Consent in Lieu of Meeting of the Board of Managers
15 of Celsius KeyFi, LLC. You see those two documents?

16 A Yes.

17 Q Okay. And let me refer you back to the e-mail. And
18 let's see. In his e-mail, Mr. Pavan directs you to cease
19 all deployment of Crypto assets owned by Celsius Network
20 Limited, crypto assets, unwind all deployed crypto assets
21 and transfer them along with all undeployed crypto assets in
22 each case together with all interest thereon to Celsius
23 KeyFi, LLC wallet as described in the board resolution. Do
24 you see that?

25 A Yes.

1 A And that direction is repeated in the demand letter
2 that's enclosed, and it's also included in the board
3 resolutions, right?

4 A Yes.

5 Q And I want to direct your attention to Romanette III in
6 Mr. Pavon's e-mail. And you see Mr. Pavon also specifically
7 directs you to "provide the seed and password for the KeyFi
8 wallet to S. Daniel Leon in his capacity as Class A manager.
9 All is detailed in the attached board resolutions and letter
10 from the Class A managers." Do you see that?

11 A I do see that.

12 Q And if you go to the letter, the March 26th letter,
13 that encloses the board resolutions, you can see there is a
14 definition of KeyFi wallet, right?

15 A Yes.

16 Q Okay. And KeyFi wallet is the OXB-1 wallet that we've
17 talked about a fair bit in this today, right?

18 A Yes.

19 Q Okay. And you are directed again to provide the seed
20 and password for the KeyFi wallet meaning the OXB-1 wallet,
21 right?

22 A Yes.

23 Q To S. Daniel Leon in his capacity as Class A manager of
24 the company over the telephone in a secure manner and it
25 goes on.

1 A Yes.

2 Q And the OXB-1 wallet, that's the same wallet that in
3 September of 2021 you used this seed phrase and passcode to
4 take \$1.4 million out of and transfer to yourself, right?

5 A No.

6 Q The 1.4 million DAI was in the OXB-1 wallet, correct?

7 A Was in there, yes.

8 Q And you used your access to the passcode for the OXB-1
9 wallet to enter the wallet and transfer the 1.4 million DAI,
10 which is equivalent to \$1.4 million U.S. dollars, to
11 yourself and to your colleagues, correct?

12 A No, not the passcode.

13 Q The seed phrase?

14 A Yes.

15 Q Okay. So, you used the seed phrase which you were --
16 that Celsius demanded that you return on March 26th on
17 September -- in September of 2021 to access the Celsius
18 wallet and take the 1.4 million DAI?

19 A I -- return implies that it was something that --

20 Q I'm not asking you to characterize the document, sir.
21 I'm asking you what you did. Did you use that seed phrase
22 and passcode or just the seed phrase --

23 A You asked me if I returned the seed phrase and
24 passcode.

25 Q In --

1 THE COURT: Excuse me. Mr. Stone, listen to the
2 question. Only answer the question.

3 THE WITNESS: Okay.

4 THE COURT: Ask your question again.

5 BY MR. HURLEY:

6 Q Sir, you used the seed phrase, the very one that is
7 referenced in this demand letter, on March 26, 2021 to
8 access six months later the OXB-1 wallet and transfer 1.4
9 million DAI to yourself and your colleagues, correct?

10 A Yes.

11 Q And in fact, you didn't turn over the seed and password
12 for the OXB wallet until after this Court entered an order
13 requiring you to do so on December 16, 2022, right?

14 A I just handed over the only copy I had after ordered,
15 yes.

16 Q Okay. Let's look at Plaintiff's Exhibit 61, please.

17 MR. ROCHE: Sixty-one?

18 MR. HURLEY: Sixty-one.

19 THE WITNESS: I'm there.

20 BY MR. HURLEY:

21 Q Plaintiff's Exhibit 61 is a copy of the order I just
22 referenced, sir. And could you please turn to Page 5, which
23 is a signature page?

24 A Yes.

25 Q And you recognize the signature block of your counsel

1 there?

2 A It doesn't look to be signed by anyone, but --

3 Q I'm just asking if you -- yeah. Okay. And you
4 recognize Judge Glenn's name and his slash -- slash
5 signature here, right?

6 A Yeah.

7 Q Okay. Please turn to Paragraph 3.

8 A Okay.

9 Q Okay. And 3 provides that you're required within 48
10 hours of the effective date to provide the plaintiffs any
11 and all documents containing the seed phrase and private
12 keys associated with any and all Celsius wallets, and it
13 goes on. Do you see that?

14 A Yes.

15 Q Okay. I want to make sure we have a clear
16 understanding of the meaning of seed phrase and private keys
17 in this context.

18 A Sure.

19 Q A private key is like a passcode, right?

20 A No. A private key is a string of letters and numbers
21 which are the mono-numeric form of the cryptography
22 associated with a blockchain wallet.

23 Q It's a string of numbers and letters that one needs to
24 access the contents of a wallet, right?

25 A Yes.

1 Q Okay. And the private key -- sometimes referred to as
2 a private key, right?

3 A Yeah.

4 Q And that allows access to digital assets that are
5 stored in the associated account, right?

6 A Correct.

7 Q A seed phrase consists of a group of algorithmically
8 selected words; is that right?

9 A I'm not sure if they're algorithmically selected, but
10 it's a group of words, yes.

11 Q Seed phrase is sometimes referred to as a recovery
12 phrase, right?

13 A Yes.

14 Q And the seed -- the seed phrase allows one to recover
15 all of the private keys for accounts associated with a
16 particular wallet, right?

17 A I'm not sure that that's the technical definition, but
18 I think that the answer to your question is yes.

19 Q Okay. And the OXB-1 address, that could be referred to
20 as a master address, right?

21 A It's the first address that is -- that is generated by
22 that seed phrase. Yes.

23 Q I mean, you called it a master address at your
24 deposition, right? Do you remember that?

25 A It's something that I call a master address. I'm not

1 sure if that's the technical definition.

2 Q Okay. And OXB-1 address has an associated seed phrase,
3 right?

4 A Yes.

5 Q And there are other child addresses of OXB-1 that are
6 also linked to the same seed phrase, right?

7 A Yes.

8 Q So, you can have multiple accounts that can have crypto
9 stored in them that are linked to the same seed phrase,
10 correct?

11 A Yes.

12 Q So, I want to ask you some questions about the OXB-1
13 seed phrase. First, you maintained the seed phrase for OXB-
14 1 in handwriting on a single piece of paper; is that right?

15 A I actually didn't maintain it.

16 Q We'll come to that. I'm going to refer to the piece of
17 paper as the seed document. Will you understand me?

18 A Okay.

19 Q Okay. And the seed document consists of a series of
20 words that's handwritten on a piece of paper, right?

21 A Yes.

22 Q The piece of paper that is the seed document has the
23 letterhead of St. Jude Children's Research Fund; is that
24 right?

25 A I believe so, yes.

1 Q The seed document is smaller than letter size, right?

2 A Yes.

3 Q It's more like notepad size.

4 A Yes.

5 Q Your father created the seed document, right?

6 A Correct.

7 Q You called him at some point before you left Celsius
8 and read the seed phrase to him and he wrote it down on that
9 St. Jude's notepad?

10 A Yes.

11 Q When exactly did you place that phone call?

12 A I'm not sure.

13 Q Was it in 2020?

14 A I'm not sure.

15 Q Was it in 2021?

16 A It was either in 2020 or 2021.

17 Q And you can't be any more precise than that?

18 A I'm honestly not sure. I think that it was in 2021,
19 because there would have been no reason for me to share that
20 with my father up until I was preparing to leave.

21 Q Why did you -- why did you call your father and give
22 him the seed phrase for the OXB-1 wallet?

23 A Because me keeping a copy of it would have been
24 dangerous for my physical well-being.

25 Q When you were speaking to your father and he was

1 writing down the seed phrase --

2 A Yes.

3 Q -- were you reading it from somewhere? Did you have it
4 memorized?

5 A No, I didn't have it memorized. I was reading it from
6 the MetaMask account that I was operating.

7 Q Okay. And you have since given the seed document to
8 your counsel to turn over to the plaintiffs, right?

9 A Correct.

10 Q And are you aware that your counsel provided the seed
11 document to Celsius on Monday, December 19, 2022?

12 A Yeah, that sounds right.

13 Q And again, that's more than 20 months after Celsius
14 directed you to turn over the seed phrase in March 26, 2021,
15 right?

16 A Yes. But Celsius had the seed phrase.

17 Q I want to talk now about certain transfers that you
18 made while you still had access to the private keys for
19 Celsius wallets.

20 A Okay.

21 Q Paragraph 12 of your November 28th declaration, in that
22 paragraph, sir, you say that you understood that Celsius
23 agreed that KeyFi was entitled to a substantial profit
24 share, and you say that the first payment was owed on
25 December 31, 2020. You see that? Tell me when you're

1 there.

2 A Sorry, my affidavit?

3 Q Your affidavit, Paragraph 12.

4 A Paragraph 12. Paragraph 12 is Celsius' former CFO
5 shared point of concerns.

6 Q Paragraph --

7 MR. ROCHE: I think he's in the wrong affidavit.

8 BY MR. HURLEY:

9 Q Go to your affidavit, Mr. Stone. Maybe -- maybe I'm --

10 A Sorry, I was looking at an exhibit. Sorry, yeah.

11 Based on the results we were achieving, yeah.

12 Q Yeah, Paragraph 12. Exactly. You say you understood
13 that Celsius agreed that KeyFi was entitled to a substantial
14 profit share and you say the first payment was owed on
15 December 31, 2020, right?

16 A Yeah, I believe so.

17 Q And you get that date, December 31, 2020, you get that
18 from the APA, right?

19 A Yes.

20 Q Mm-hmm. And the APA was signed we just established on
21 January 11, 2021, right?

22 A Yes. But it was in final form in early December and in
23 late November, I would say.

24 Q But the due date, whatever form it was in, you believe,
25 was -- the first due date for the first payment was December

1 31, 2020, right? That's what you said in your affidavit.

2 A For payment from Celsius to KeyFi or from Celsius KeyFi
3 to KeyFi, yes.

4 Q Right. But many of the payments that you started to
5 make to yourself are before December 31, 2020, correct, sir?

6 A I would not say many.

7 Q Okay. Let's talk about your claim that you were
8 authorized to take Celsius property as an advance on profit
9 share. First, you claim that authorization was provided by
10 Alex Mashinsky, correct?

11 A Correct.

12 Q And while you claim others at Celsius knew about the
13 authorization, it was Mashinsky and Mashinsky alone whom you
14 claim actually gave the authorization, correct?

15 A Yes.

16 Q You claim Mashinsky first authorized you to take
17 Celsius assets as an advance on profit share sometime in
18 late October or early November 2020. Right?

19 A It could have been late November, but sometime in those
20 months, yes.

21 Q Why don't we go to your deposition, sir? Please turn
22 to Page 46 of your deposition transcript.

23 MR. ROCHE: Which deposition, Mr. Hurley?

24 MR. HURLEY: Mr. Stone's deposition.

25 MR. ROCHE: He has two depositions.

1 MR. HURLEY: Oh, the -- sorry, the December 22nd.

2 THE WITNESS: Page 46, yes.

3 BY MR. HURLEY:

4 Q Yeah, Page 46. Okay. And in fact, you did give a
5 deposition on December 22nd, correct, sir?

6 A Yes.

7 Q I took your deposition. You remember that?

8 A Yeah.

9 Q Okay. And on Page 46, I want to begin reading from
10 Line 6, and if you'd please follow along with me, sir?

11 Question: "Did anyone other than Mashinsky authorize you to
12 take advances on profit share?" Answer: "I'm not sure if
13 authorized is the correct characterization. There were
14 other executives and individuals that were Celsius employees
15 that acknowledged and are -- and were aware that I was --
16 that I had been authorized to take some early profit share
17 advance, yes." Question: "But the authorization itself
18 came from" -- from -- sorry -- from "Mashinsky; is that your
19 testimony? Others knew about it but it was Mashinsky that
20 gave the authorization?" Answer: "To the best that I can
21 recall." Question: "When did Mashinsky authorize you to
22 take advances?" Answer: "I believe the earliest point was
23 either very late October or very early December 2020 once it
24 was decided that I would be moving to Puerto Rico on
25 Celsius' request." "Okay. When was the last time -- the

1 first time was October. I think you said late October or
2 early December," and you correct yourself. Answer: "Early
3 November, sorry."

4 Did I ask those questions and did you give those
5 answers, sir?

6 A Yes.

7 Q And did you understand that you were under oath when
8 you were giving your deposition just as you are today.

9 A Yes.

10 Q And the last time you claim Mashinsky gave you such
11 authorization was either the last week of February 2021 or
12 the first two days of March 2011, right?

13 A Yes.

14 Q And during that period of time, you claim to have had
15 communications with Mashinsky that constituted Mashinsky
16 authorizing you to take assets on at least four occasions
17 but fewer than 10 occasions, right?

18 A I believe that sounds right.

19 Q One of those alleged miss -- communications with
20 Mashinsky was in person. Others were over the telephone and
21 once or twice it was via e-mail, right?

22 A I believe so.

23 Q Let's start with the one or two authorizations that you
24 claim took place over e-mail. First of all, you don't have
25 copies of either of those e-mails, right?

1 A I don't believe so.

2 Q And you don't know whether anyone other than you and
3 Mashinsky was copied on the e-mails?

4 A On those, perhaps. Probably not. And the e-mails
5 wouldn't have been Jason, I authorize you to take X amount.
6 It would have been me saying, hey, I'm going to take X, Y,
7 Z. Yeah.

8 Q Okay. So, you don't know if anyone was copied but you
9 believe that if anyone was copied, it either would have been
10 Connor Nolan or Harumi Urata-Thompson, right?

11 A On those e-mails, it wouldn't have been Connor. It
12 would have been Harumi.

13 Q Okay, let's go to your deposition transcript, please.

14 A Okay.

15 Q Go to Page 50.

16 A Okay.

17 Q Okay, I'm going to start at Line 9. "Okay. Got it.
18 To your recollection, I know you're saying you don't have
19 the e-mails, but to your recollection, was there anybody
20 copied on those e-mails or addressed on those e-mails other
21 than you and Alex?" Answer: "I do believe that either
22 Connor Nolan or Harumi Urata-Thompson may or may not have
23 been CC'd on some of those e-mails." Do you see that, sir?

24 A Yes.

25 Q Did I read it correctly?

1 A Yes.

2 Q You understood you were oath -- under oath at your
3 deposition just as you are today?

4 A I do.

5 Q Okay. And you were in the courtroom today when Mr.
6 Nolan denied any recollection of any such e-mail, right,
7 sir?

8 A Yes.

9 Q You heard that testimony?

10 A I did.

11 Q Let's talk about the alleged telephonic authorization
12 provided by Mashinsky.

13 A Okay.

14 Q You claim that the first authorization from Mashinsky
15 was given by telephone, correct? The very first one?

16 A I believe so, yes.

17 Q And that call you believe was only between you and Mr.
18 Mashinsky, right?

19 A Yes. It was around the time that we had decided that I
20 was going to be moving to --

21 Q Just asking who was on the call.

22 A Yes.

23 Q No one else was on the call other than you and
24 Mashinsky for the first one, right?

25 A I don't believe so.

1 Q And you were in the courtroom when Mr. Mashinsky denied
2 ever giving you that authorization, correct? You were here
3 for that?

4 A Yes, I was.

5 Q Let's talk about the other telephonic authorizations
6 that you claim you received from Mashinsky. You claim that
7 after the first call, Connor Nolan or Harumi Urata-Thompson
8 was on the phone for at least one of the times that
9 Mashinsky authorized you to take assets as profit share,
10 correct?

11 A Yes.

12 Q And again, you were in the courtroom when Mr. Nolan
13 denied any recollection of ever being on a call like that,
14 right? You were here for that?

15 A I was.

16 Q Regarding Holert, you claim that he was present during
17 discussions in which you and Mashinsky openly talked about
18 the fact that you had been taking and continued to take
19 amounts of money from Celsius as early advances on profit
20 share, right? You claim Holert witnessed that, right?

21 A Yes.

22 Q And you were in the courtroom today when Mr. Holert
23 denied ever having witnessed any such conversation, right?

24 A Yes.

25 Q You were here for that. Let's talk about the amount

1 authorized. By March 9, 2021, that's the date you sent your
2 resignation letter, right?

3 A Yes.

4 Q You claim the KeyFi's share of profits generated had
5 reached as much as \$145 million, right?

6 A We believe that to be the case.

7 Q That's just KeyFi's share. That's not the profits.
8 That's just the KeyFi's share of the profits --

9 A Correct.

10 Q -- according to you. Okay. And you claim that you
11 were authorized to take -- by Mashinsky to take 10 to 15
12 percent of that amount, right?

13 A I believe. Yes.

14 Q So, you claim in other words that Mashinsky authorized
15 you to take property worth about 15 million to \$20 million
16 out of Celsius wallets and transform them to your wallets,
17 right?

18 A Up to and to KeyFi wallets, not necessarily my wallets.

19 Q Mm-hmm. And you don't have a single e-mail, WhatsApp
20 communication, text message, anything in writing that
21 confirms your claim that Alex Mashinsky authorized you to
22 take 15 to \$20 million out of Celsius wallets, do you?

23 A No, I don't know that to be true.

24 THE COURT: Do you have a writing?

25 THE WITNESS: Sorry?

1 THE COURT: Do you have a writing that backs up
2 that Mashinsky authorized you to take an advance on profits?

3 THE WITNESS: I haven't been given access to all
4 the documents that we got in discovery. So, I don't know.

5 THE COURT: Well --

6 MR. HURLEY: Can -- may I, Your Honor, on that
7 point?

8 THE COURT: Go ahead. Go ahead.

9 BY MR. HURLEY:

10 Q Mr. Stone, you said that you believe some of those
11 communications may have been over WhatsApp and text message,
12 right? You remember telling me that?

13 A Correct.

14 Q Okay. WhatsApp and text messages, those are located on
15 your phone, right?

16 A Yes.

17 Q Okay. Did you look?

18 A I did.

19 Q You haven't come forward with any such text message or
20 WhatsApp message that memorializes the supposed
21 authorization that you get to take 15 to \$20 million in
22 Celsius property, have you?

23 A I never said that he put in writing that I could take
24 15 to \$20 million.

25 Q Okay.

1 THE COURT: Could you please answer the question?

2 That wasn't the question.

3 THE WITNESS: I'm sorry. Can you repeat the
4 question?

5 BY MR. HURLEY:

6 Q Despite looking at your WhatsApp and your text
7 messages, you never found a WhatsApp message or a text
8 message or anything else that memorializes the supposed
9 agreement that Mashinsky told you, you could take 15 to \$20
10 million from Celsius and transfer it to yourself?

11 A I don't believe there was ever a written communication
12 that said 15 or \$20 million.

13 Q Okay. All I'm asking is whether you searched for it.
14 You didn't find it, right?

15 A I don't believe that there ever existed anything like
16 that.

17 Q Okay. So, you don't think there ever was a writing
18 that would memorialize this claim that you're making that
19 Alex Mashinsky said you could take up to \$15 or \$20 million
20 dollars?

21 A That I could take early profit share, yes. Not a
22 specific amount, no.

23 Q Okay, well, have you --

24 THE COURT: I'm sorry. Mr. Hurley -- Mr. Hurley,
25 stop. That answer was ambiguous. Ask your question again.

1 I really -- this is an important point and I want a clear
2 record on it.

3 MR. HURLEY: Okay.

4 THE COURT: Mr. Mashinsky, listen carefully and
5 answer the question. Don't dance around it.

6 BY MR. HURLEY:

7 Q Okay, so Mr. Stone, let's just come back to -- you had
8 identified --

9 THE COURT: I said -- I meant Mr. Stone. I'm
10 sorry. I apologize.

11 BY MR. HURLEY:

12 Q Mr. Stone, you certainly don't have -- have not
13 identified any document that you claim memorializes an
14 agreement that you could take 15 to \$20 million of Celsius
15 assets off the platform, correct?

16 A Correct.

17 Q Not only have you not found it, you don't think it
18 exists, right?

19 A Not a document that references that number, no.

20 Q Okay. And you said there may be documents --

21 THE COURT: (Indiscernible) if there's such a
22 document that references any other number. You're saying
23 there's no document that reflects that number.

24 THE WITNESS: I don't --

25 THE COURT: Is there a document that you know of

1 that reflects an authorization for you to take an advance on
2 profits in any amount?

3 THE WITNESS: I believe that there are messages
4 that authorized me or refer to me being authorized to take
5 some early profit share but not a specific amount in writing
6 I believe.

7 BY MR. HURLEY:

8 Q But you can't identify any specific message of the kind
9 you just described, correct?

10 A Not at this time.

11 Q Right. You haven't produced anything in discovery that
12 is -- fits the description that you just gave, have you?

13 A I'm not sure. I -- I'm not sure.

14 Q Okay. You mentioned that you weren't provided all your
15 e-mails. You said that before?

16 A Correct.

17 Q Okay. You're aware that the parties to this case
18 engaged in an expedited discovery in advance of this
19 hearing?

20 A Yes, I'm aware.

21 Q Okay. And that your counsel provided requests to
22 Celsius for the information that your counsel believed was
23 pertinent and wanted to get in advance of the hearing. Are
24 you aware they did that?

25 A Yes.

1 MR. ROCHE: Objection. Foundation?

2 THE COURT: Overruled.

3 BY MR. HURLEY:

4 Q And you do have some e-mails from your Celsius e-mail
5 address, right? Because you produced some e-mails in
6 discovery that are Celsius.Network e-mails, right?

7 A Yes.

8 Q Right. So, sometimes you would forward e-mails that
9 you thought were important to yourself, right, to make sure
10 you kept them?

11 A No, I actually backed up a copy of my inbox a couple of
12 days before sending the resignation e-mail but for some
13 reason there were a couple of months missing from 2020.

14 Q Okay. So, you backed up your e-mail inbox and you had
15 access at least to the backed up e-mail inbox with the
16 exception of a couple months in 2020; is that right?

17 A Yeah.

18 Q And you searched through that material too in looking
19 for documents that would support your claim; is that
20 correct?

21 A Yes.

22 Q Okay. Okay. Let's go back to Plaintiff's Exhibit 41
23 for a moment, please. This is a services agreement dated
24 December 31 that we looked at before.

25 A Okay.

1 Q And if we could go to Schedule A, which is the numbers
2 PX 41-6 on the bottom right-hand corner?

3 A Yeah.

4 Q Okay. All right. And it references to Celsius, in all
5 caps, KeyFi. Do you see that -- those references?

6 A Yes.

7 Q And just again to level-set, KeyFi in this document is
8 referring to Celsius KeyFi, not your company KeyFi, right?

9 A I believe so, yes.

10 Q Okay. And the third bullet provides that KeyFi --
11 Celsius KeyFi I shall retain control of its internal budget
12 and profit and loss determination in good faith. Do you see
13 that?

14 A Yes.

15 Q Okay. And you were the CEO of Celsius KeyFi, right?

16 A Yes.

17 Q But while you were CEO of Celsius KeyFi, you never
18 caused Celsius KeyFi to prepare a P&L, did you?

19 A We weren't able to, no.

20 Q Instead, you directed the Celsius KeyFi team to begin
21 developing a software program that was code named wormhole,
22 right?

23 A Yes. And we directed that long before this document
24 was signed.

25 Q So, you were working on the wormhole program, you and

1 your team, so that Celsius could understand the KeyFi P&L;
2 isn't that right?

3 A I'm not sure if it was to understand the P&L or if it
4 was for granular tracking of transactions, but I think the
5 idea was to do both.

6 THE COURT: Mr. Hurley, let me -- let me interrupt
7 you. Just give me a sense for how long do you think your
8 cross-examination is going to continue? I'm not rushing
9 you. I'm just trying to get an estimate.

10 MR. HURLEY: Yeah. I -- it's a little hard to
11 gauge, but I think we're moving -- making pretty good
12 progress. Certainly at least another hour.

13 THE COURT: All right. Let's take a 10-minute
14 recess. We'll take a 10-minute recess until 4:00, okay?

15 MR. HURLEY: okay.

16 (Off the record.)

17 THE COURT: Mr. Stone, you're still under oath.

18 BY MR. HURLEY:

19 Q Mr. Stone, did you confer with your counsel about the
20 subject of the case while you were on the break?

21 A No.

22 Q So, I was directing you to some testimony in your
23 deposition. You should actually turn to Page 106, sir.

24 A One second, 106.

25 Q Yeah, it's related to the wormhole, and I'm going to

1 start reading at Line 5. Question: "Did (indiscernible) --
2 were they involved at all in trying to develop the
3 wormhole?" Answer: "Not in trying to develop. They did
4 assist in reviewing the code based on the logic of how we
5 were constructing the program to read the blockchain
6 transactions that was supposed to compute, but wormhole
7 itself was not a true accounting software. It was -- it was
8 meant to be a tracker so that Celsius' accounting team could
9 create the final P&L. The wormhole itself was never
10 intended to output final P&L itself."

11 Question: "The tracker was supposed to be a tool
12 that would help in creation of the P&L ultimately?" Answer:
13 "In fact, it would be required, I believe, to do so.

14 Question: "Why do you say it would be required?" Answer:
15 "Because Celsius wasn't looking for other ways to compute
16 P&L other than relying on my team's development of a program
17 that would get them that middle of the way there, and we had
18 told them from the beginning that we didn't know when it
19 would be done, and it never ended up being done." Did I
20 read that correctly, sir?

21 A Correct.

22 Q And you understand you were under oath at your
23 deposition just as you are here today?

24 A Yes.

25 Q Okay. And in fact, wormhole never was completed,

1 right?

2 A Correct.

3 Q And the wormhole was never delivered to Celsius in any
4 form that would be useful to anyone, right?

5 A I believe so.

6 Q And if Celsius were to try to prepare a P&L for Celsius
7 KeyFi, the wormhole would have been required, right? That's
8 what you said at your deposition, isn't it?

9 A If they weren't using any -- if they weren't looking
10 for anything else to use, yes.

11 Q And you understood that they were relying on you and
12 your team to develop the wormhole in order to be able to
13 understand and prepare a P&L, right?

14 A A final P&L, yes.

15 Q Let's talk about the NFT purchases for a minute. You
16 claim Mashinsky authorized you to use Celsius assets to buy
17 NFTs in his advance on profit share, right?

18 A Yes.

19 Q And you bought hundreds of NFTs using Celsius' assets,
20 right?

21 A I think thousands.

22 Q But you never provided, for example, a written report
23 to Celsius advising that consistent with your alleged
24 agreement on profit share, you had bought certain identified
25 NFTs, right? You never sent an e-mail like that, did you?

1 A No.

2 Q And you can't identify any document, whether e-mail or
3 otherwise, in which the purchase by you of NFTs is
4 specifically tied to your claim that you were allowed to buy
5 NFTs as profit share, right? You can't identify any
6 document like that, can you?

7 A I don't believe so.

8 Q At most, you may have written an e-mail to the effect
9 of, "'Hey, I bought some more NFTs this week,' smiley face,"
10 right?

11 A Sounds like something I would say.

12 Q Okay, but you haven't even found the smiley face e-
13 mail, have you, sir?

14 A I'm not sure.

15 Q Okay. Let's talk about the property transfers. I want
16 to direct your attention again to Plaintiff's Exhibit 61.
17 And I want to direct you to Paragraph 2 of Exhibit 61, which
18 is this Court's order.

19 A Okay.

20 Q Paragraph 2 provides the defendants are required on or
21 before 12 p.m. Eastern time on December 20, 2022 to provide
22 a sworn statement specifically identifying under penalty of
23 perjury all property, including all Stone-utilized assets
24 and all subject property and its current locations. Do you
25 see that?

1 A I do.

2 Q And you see that in footnote three, Stone-utilized
3 assets is defined to refer to any assets transferred or
4 otherwise used by or at the direction of the defendants from
5 any Celsius wallet, and subject property refers to NFTs,
6 interest in blockchain-related companies and any other
7 property of any kind acquired in whole or in part with
8 Stone-utilized assets or their proceeds; do you see that?

9 A I do.

10 Q Okay. And together they're defined as initial cap
11 property, right?

12 A And -- say again?

13 Q Property refers collectively to the Stone-utilized
14 assets and the subject property. You see that?

15 A Yeah, I do.

16 Q Okay. So, pursuant to this order, you were required to
17 provide a sworn statement with that information, right?

18 A Yes.

19 Q Okay. And you in fact did provide a sworn statement
20 that -- a sworn statement in connection with Paragraph 2 of
21 the Court's order, right?

22 A Yes.

23 Q Can we go to Plaintiff's Exhibit 64, please? And it's
24 titled Revised Affidavit of Jason Stone Pursuant to Joint
25 Stipulation and Agreed Order. Tell me when you're there.

1 A Yeah.

2 Q You see it?

3 A Yeah.

4 Q Okay. And it's called revised because you had provided
5 an affidavit earlier in the day at around noon by the
6 deadline and then revised it and sent it around -- later the
7 evening on December 22nd, right?

8 A I believe so.

9 Q Or December 20th, I'm sorry. Okay. And you recognize
10 the signature on the final page?

11 A Yes.

12 Q And let's go to paragraph --

13 THE COURT: It's your signature, right?

14 THE WITNESS: Yes.

15 THE COURT: Go ahead.

16 BY MR. HURLEY:

17 Q And then go to paragraph -- Paragraphs 2 and 3, please.

18 A Okay.

19 Q Two says attached to this affidavit is Exhibit A which
20 I prepared in connection with this matter.

21 A Yes.

22 Q And it says Exhibit A is a spreadsheet which reflects
23 the transfers made from Celsius wallets to KeyFi, Inc. as
24 authorized payouts in advance of formal calculation of the
25 same, including transfers and uses from there. Do you see

1 that?

2 A Yes.

3 Q Okay. And I want you to -- I want to direct your
4 attention to plaintiff's Exhibit 65, but it is a -- it's a
5 large spreadsheet.

6 A Okay.

7 MR. HURLEY: Can we put it up on the screen? How
8 are we going to -- okay. Your Honor, I'm not quite sure
9 that these --

10 THE COURT: I have it in front of me.

11 MR. HURLEY: You do? Okay. You have the hard
12 copy?

13 THE COURT: I have the hard copy in front of me.

14 MR. HURLEY: Okay. It's a little easier if we can
15 -- if you could -- I guess you -- but you can't see our
16 screen so it's okay. All right, we'll --

17 THE COURT: I can see your -- well, if you'd like
18 to share the screen and put it up, and you can expand the
19 size, go ahead.

20 MR. HURLEY: Okay. It's 60 -- yeah, 65. Yes.

21 MAN 2: May I have permission to share my screen?

22 THE COURT: Deanna, can you permit him to share
23 the screen?

24 CLERK: Jessica's on now.

25 CLERK: I am on. Mr. (indiscernible) has been

1 made co-host. You can go ahead and share your screen now.

2 MAN 2: Okay, thank you.

3 THE COURT: Thank you, Jessica.

4 MR. HURLEY: Is it going to appear up here, too,
5 or (indiscernible) back here?

6 MR. ROCHE: I think they should appear up there.
7 When I did it earlier, they appeared --

8 MR. HURLEY: Oh, yeah, okay.

9 MR. ROCHE: Maybe not.

10 MR. HURLEY: That's not -- (indiscernible).

11 BY MR. HURLEY:

12 Q Okay. So, sir, do you recognize Plaintiff's Exhibit 65
13 as the spreadsheet that was attached to your December 20th
14 affidavit as Exhibit A? And I'm going to get to the fact
15 that you circulated another one later, but just --

16 A Yeah.

17 Q Okay. And so, as of December 20, 2022, anyway, PX 64,
18 your revised affidavit and this Excel spreadsheet that is PX
19 65 comprised your sworn statement, right?

20 A I believe so.

21 Q Okay. And you can see PX 65 has three workbooks.
22 We've got to make it visible so that the --

23 A Yes, I think so.

24 WOMAN 1: (Indiscernible).

25 MR. HURLEY: Yeah, I guess the Excel that actually

1 shows the workbooks so we go tab by tab.

2 WOMAN 1: Yeah, the (indiscernible) one.

3 MR. HURLEY: No.

4 WOMAN 1: Just that --

5 MR. HURLEY: Just the version that has the tab so
6 we can see the labeled tabs. Let me keep going and
7 hopefully we'll be able to find another version of this,
8 Your Honor, but I think we can get something done while
9 we're waiting.

10 BY MR. HURLEY:

11 Q So, the spreadsheet that was -- the original
12 spreadsheet that was attached to your revised affidavit,
13 sir, on December 20th had three tabs on the Excel, right?

14 A Yes.

15 Q Okay. And you think you guys referred to them as
16 workbooks? I've been told maybe that's not exactly the
17 right term for it in Excel, but I've been calling it
18 workbooks, too, so three workbook tabs in the Excel?

19 A Right.

20 Q Okay. One of those tabs was labeled ETH transfers to
21 and from interested wallets, and one was labeled ERC 20
22 transfers to and from interested wallets, and one was
23 labeled NFT buys, right?

24 A Yes.

25 Q Okay. And then on January 3rd, you delivered a revised

1 version of Exhibit A -- of the Exhibit A to your December
2 20th revised affidavit, right?

3 A I believe so.

4 Q Okay. And we really need PX 69 now and the version
5 that shows the tabs would be especially helpful.

6 MAN 1: (Indiscernible) share that.

7 MR. HURLEY: Okay. Can you move it so that we can
8 see all the tabs?

9 MAN 1: (Indiscernible).

10 MR. HURLEY: Okay.

11 BY MR. HURLEY:

12 Q Can you see that -- the spreadsheet on your screen
13 there, Mr. Stone? Is there a spreadsheet that's come up
14 there?

15 A Yeah, but it's super tiny.

16 Q Okay.

17 MR. HURLEY: What's that?

18 MAN 1: I can enlarge it. Just let me know which
19 tab.

20 MR. HURLEY: Okay.

21 BY MR. HURLEY:

22 Q For now, I'm just going to ask you some questions. I
23 think you probably should be able to read even in this size.

24 A Okay.

25 Q Okay. So, first of all, PX 69 which is on the screen

1 is another Excel spreadsheet. You see that?

2 A Yes.

3 Q But this one has five workbooks instead of three
4 workbooks, right?

5 A Yes.

6 Q Okay. And three of the workbooks correspond to the
7 three workbooks that were also part of the December 20th
8 Excel plus there's two new workbooks, right?

9 A Yeah, I believe so.

10 Q And so, do you recognize PX 69 as the revised Exhibit A
11 the defendants provided on January 3rd?

12 A Yes.

13 Q And PX 69 is intended to replace PX 65, the original
14 exhibit to your December 20th revised sworn affidavit,
15 right?

16 A Yes, I believe so.

17 Q Okay. So, as of January 3rd, PX 64, the revised
18 affidavit, plus PX 69 comprised the sworn statement that
19 defendants were required to supply by the court, right?

20 A I believe so.

21 Q Okay. So, let's go to PX 64, Paragraph 4, and it says
22 Exhibit A contains three workbooks. The first workbook is
23 entitled ETH transfers to and from interested addresses. It
24 reflects the ETH-based transfers of assets from Celsius
25 wallets to wallets controlled by defendants. Do you see

1 that?

2 A Yes.

3 Q Okay. And by the term Celsius wallets, you're
4 referring to wallets that Celsius initially created or
5 addresses that are derived from the seeds of the OXB-1
6 wallet and the 43-D wallet, right?

7 A Yes.

8 Q First, did Celsius ever provide coins to you for
9 deployment through any addresses other than addresses
10 derived from the seeds of OXB-1 or 43-D?

11 A Did Celsius ever -- say again?

12 Q Provide coins to you for deployment through any
13 addresses other than addresses of OXB1 and 43-D.

14 A Do you mean, did they send me coins to addresses that
15 weren't part of those seeds?

16 Q Yes.

17 A I think maybe in one case, but I can't remember.

18 Q Okay. Do you have -- do you know the address or the
19 first several digits of the address?

20 A No, no. It would've been for a one-time thing only.

21 Q Okay. Approximately when?

22 A It would've been at the very beginning of our -- of the
23 relationship.

24 Q Do you remember the amount or type of coins?

25 A I think that there was a Wrapped Bitcoin transaction

1 that we did something with that was on like a separate
2 wallet seed, sometime in September 2020, but I honestly
3 can't remember. It was for like a short duration of time.

4 Q Okay. And at that time, you -- rough estimate of what
5 the Wrapped Bitcoin number was that was transferred to you?

6 A I don't remember, but it -- I don't believe it was more
7 than seven figures.

8 Q Seven figures --

9 A U.S. dollar value.

10 Q U.S. dollars. Okay. Okay. Now in your spreadsheet,
11 in some cases, the transfer that's identified in the
12 spreadsheet is actually for the benefit of the defendants,
13 but it's being sent to a wallet that is not owned or
14 controlled by the defendants, right, on some of the
15 occasions?

16 A For the benefit of? Yes, I believe that's the case.

17 Q Okay. And in the first workbook, which is the ETH
18 transfers workbook --

19 A Yep.

20 Q You see that there are three rows that are highlighted
21 in yellow, Rows 14, 62, and 63?

22 A Yes.

23 Q Okay. And are you aware that in their January 3rd
24 transmittal email your counsel advised that Rose highlighted
25 in yellow in this document are the transactions where

1 defendants believe that Celsius is ultimately in possession
2 of the highlighted -- of the property in the highlighted
3 row?

4 A Yeah, I see that.

5 Q So that yellow highlighting, that was added by you or
6 your counsel?

7 A Yes.

8 Q Okay. Let's take a look at Column C in the first book,
9 which is labeled From. And you'll see underneath Column C,
10 there are wallet addresses.

11 A Yeah.

12 Q And those addresses generally are the Celsius wallets
13 that you referred to in Paragraph 4 of your sworn affidavit,
14 right, the From wallets?

15 A I believe so, yes.

16 Q Let's move to Column D, which is labeled To. And again
17 under Column D are wallet addresses, and those addresses
18 under Column D generally are the wallets controlled by
19 defendants referenced in Paragraph 4 f your sworn affidavit,
20 though as I just noted, there are some examples where it's a
21 wallet that is not owned by the defendants but the transfer
22 is for the benefit of the defendants, right?

23 A In some cases, I believe so. Yes.

24 Q Okay. Column E is labeled Token Value and Column E
25 identifies the amount of ETH associated with each listed

1 transaction?

2 A Yes.

3 Q The number of coins, in other words, right?

4 A Yes.

5 Q And Column G shows the date of the transfer from the
6 Celsius wallet to the defendant's wallet, right?

7 A Yes.

8 Q Okay. And Column F indicates the U.S. dollar
9 equivalent of the ETH transferred as of the transfer date,
10 right?

11 A Yes.

12 Q Column H includes some information about what happened
13 to the ETH after defendants transferred it from Celsius
14 wallets to their own wallets, right?

15 A Yes.

16 Q So for example, in Column H you indicate that the 350
17 ETH the defendants took from Celsius on February 21st, 2021
18 was used to purchase NFTs for KeyFi, right? Do you see
19 that?

20 A Yes.

21 MR. HURLEY: Are you with me, Your Honor? Know
22 it's --

23 THE COURT: Yes.

24 MR. HURLEY: Okay.

25 BY MR. HURLEY:

1 Q And now you don't identify which NFTs were purchased
2 with the 350 ETH in the spreadsheet, right?

3 A Say again?

4 Q You say that the 350 ETH was used to purchase NFTs, but
5 you don't identify which NFTs were purchased in this
6 spreadsheet, correct?

7 A Correct. Well, no --

8 Q For this particular row.

9 A For this particular row, no.

10 Q Okay. You could have found that information out,
11 right, and provided it in the spreadsheet but you didn't
12 think that was the exercise and so you didn't do it, right?

13 A I think actually it is reflected in the NFT buys, but
14 I'm not sure.

15 Q So you indicate that the NFTs that were purchased here
16 were either sold for ETH or transferred to the 0X50 wallet.
17 That's one of your wallets?

18 A That's a KeyFi wallet.

19 Q Or remain in the 0XFC wallet, which is also a KeyFi
20 wallet?

21 A Yes.

22 Q And you have the seed phrase and private key for 0XFC
23 and 0X50, right?

24 A Yes.

25 Q Okay. And then in Cell H-2, you indicate three

1 possible fates for the NFTs that were purchased with the 350
2 ETH, right, A, B, and C. You see that?

3 A I think A, B, and C refers to the fate of the 350 ETH,
4 not the NFTs, but yes.

5 Q And with respect to NFTs that were sold for ETH, you
6 would be able to at least to some large extent to determine
7 where the ETH proceeds went, right?

8 A To some extent.

9 Q But you didn't do that here, right? You didn't think
10 that was the exercise?

11 A I did not believe that was the exercise.

12 Q Okay. So H-3 indicates that that ETH was spent on
13 expenses. See that?

14 A Yes, I do.

15 Q And Column I indicates this expense was a loan
16 repayment to Emil Bailey. See that?

17 A I don't see it, but yes.

18 Q It's in Column I.

19 A The Zoom thing is blocking --

20 Q Okay --

21 A -- Column I, but yeah. I remember.

22 Q So this 850 ETH that was -- that you transferred out of
23 Celsius wallets was used to repay a personal loan to you
24 from Mr. Bailey, right?

25 A Yes.

1 Q And 850 ETH at that time was worth more than \$625,000,
2 right, on the transfer date? That's what's indicated.

3 A Yes.

4 Q Okay. So -- and you transferred it to -- the wallet
5 that is the transferee wallet on this line, this row of the
6 spreadsheet is a wallet that's controlled by Mr. Bailey,
7 right?

8 A I believe so.

9 Q The ETH that you were repaying, the ETH that you
10 borrowed from Mr. Bailey, you used to invest in DeFi
11 activities personally, right?

12 A Yes.

13 Q You used those coins for activities like yield farming
14 and you believe that your activities generated a profit
15 between \$500,000 and \$2 million, right?

16 A If I remember correctly. Sounds right.

17 Q And you can't recall whether you still have the
18 proceeds of that activity, right, the \$500,000 to \$2 million
19 in proceeds?

20 A I don't -- yeah, I'm not sure if the proceeds from that
21 specific investment are available to me.

22 Q Okay. Let's look at Cell H-11. By the way, the
23 workbook includes 36 rows that are labeled Spent on
24 Expenses. Does that sound about right to you?

25 A This workbook? Maybe.

1 Q Okay. Let's go to column -- to Cell H-11 which is one
2 of the Spent on Expenses.

3 A Okay.

4 Q Column I indicates this was spent on rent.

5 A Yeah.

6 Q That was 179 ETH plus the 1 ETH in Line 55 which you
7 used for rent on a home in Puerto Rico, right?

8 A Correct.

9 Q That was worth about \$114,000 at the time?

10 A Looks that way.

11 Q That was for a year's rent on a three bedroom house in
12 Puerto Rico?

13 A Yes.

14 Q And the wallet in Cell 11-D is the wallet of the
15 homeowner from whom you rented, right?

16 A I believe so, yes.

17 Q Okay. Some of the other rows were spent on expenses
18 and -- well, let me back up. So there are some examples on
19 this ETH transfers worksheet of you transferring ETH and
20 using it for Jason Stone's personal benefit, right, repaying
21 the personal loan, paying your rent. Fair?

22 A Yes.

23 Q Some of the other rows where it's indicated Spent on
24 Expenses, indicate that they were expenses or you believe
25 they were expenses for KeyFi, right? Some of them.

1 A Yes, but also for Celsius KeyFi.

2 Q Okay. With respect to KeyFi, you own 38 percent of
3 that company, right? We already established that.

4 A I think that that's the right number.

5 Q And as the plurality owner of KeyFi, you actually
6 consider your personal expenses and KeyFi expenses to be one
7 and the same, right?

8 A No.

9 Q Okay. Let's go to Page 177 of your transcript, please.

10 THE COURT: Are you still going to be looking at
11 the spreadsheet?

12 MR. HURLEY: Yes.

13 THE COURT: Okay.

14 MR. HURLEY: For some time, Your Honor.

15 BY MR. HURLEY:

16 Q I'll withdraw that. Let's actually go back to the
17 spreadsheet and let's go to Column E in the ETH transfer
18 spreadsheet, Mr. stone.

19 A Sorry?

20 Q We're going to go back to the spreadsheet.

21 A Okay.

22 Q And we'll go back to -- we'll go to Column E. And
23 that's the column that indicates the amounts of ETH
24 transferred, right? You see that?

25 A Yes.

1 Q Okay. And if that column sums up to 2,973.67 in ETH,
2 does that sound about right?

3 A If that's what the workbook shows.

4 Q And if you eliminate the yellow highlighted transfers,
5 the ones that you think wound up back with Celsius, it's
6 still 2,831 ETH.

7 A Okay.

8 Q That's worth more than \$3.5 million at today's prices,
9 right?

10 A Yes.

11 Q And worth close to \$4 million at the prices at the time
12 of the transfers, right?

13 A I believe so.

14 Q This workbook lists 71 separate transfers of ETH,
15 right, and 68 if you exclude the yellow highlighted ones
16 that you think went back to Celsius?

17 A Okay.

18 Q And you see the transfers spanned from September 9th,
19 2020 through September 13th, 2022?

20 A I don't see that, but okay.

21 Q Okay. And so some of the transfers, the September 9th
22 transfer for example, that's before even you claim that you
23 were authorized to take property by Mashinsky off of the
24 platform, right?

25 A Correct, but that wasn't the implication of this

1 workbook at the time I was constructing it.

2 Q Okay. And September 13th, 2022, that's more than six
3 months after you resigned, right?

4 A '22?

5 Q Yes. Sorry, it's '21. September 13th, 2021 is the
6 last transfer of ETH on this workbook and that is six months
7 after you resigned, right?

8 A What line?

9 Q We'll come back to that.

10 A Okay.

11 Q And again, you've made 68 transfers here. You can't
12 point to a single piece of paper in which Celsius authorizes
13 a single one of these 68 ETH transfers, right?

14 A Celsius wasn't big on paper.

15 Q Is the answer --

16 A No.

17 Q Okay. Let's go to the next workbook. It's labeled
18 ERC-20 Transfers To and From. ERC-20 token are fungible
19 tokens created using the Ethereum blockchain, right?

20 A Yes.

21 Q For example, stable coin USDC is an ERC-20 token,
22 right?

23 A Yes.

24 Q As is the stable coin Dai, D-A-I?

25 A Yes.

1 Q Right? So please turn to your revised affidavit which
2 again is PX-64 and go to Paragraph 5. And Paragraph 5 says,
3 "The second workbook is entitled ERC-20 transfers to and
4 from interested addresses. It reflects the ERC-20 token
5 that were sent from Celsius wallets to wallets controlled by
6 defendants." Do you see that?

7 A Yes, I do.

8 Q Okay. And let's just go through the columns here again
9 to make sure that we are all understanding what's being
10 presented here. So Column B identifies the particular type
11 of the ERC-20 token in the transaction, right?

12 A Yes.

13 Q Column C identifies the Celsius wallet referred to in
14 Paragraph 5 of your sworn affidavit as the from wallet,
15 right?

16 A Yes. Upon looking at this, in Paragraph 5, I would say
17 that there is a piece that maybe is not correct here. It
18 says sent from Celsius wallets to wallets controlled by
19 defendants, but I think it should actually be sent from
20 Celsius wallets to wallets not controlled by plaintiffs.

21 Q Because some of the addressee wallets are wallets where
22 you're transferring assets out of the Celsius ecosystem to
23 defendants or at the direction of defendants, right?

24 A Right. So that would have included things that were
25 expenses related potentially to Celsius KeyFi, for instance.

1 Q Well, we'll come back.

2 A Okay.

3 Q Okay, Column E is token value.

4 A Yep.

5 Q Number of corresponding ERC tokens, right?

6 A Yep.

7 Q And U.S. dollar value, again, that's the value of those
8 tokens at the exchange rate prevailing at the time of the
9 transfer, right?

10 A Yep.

11 Q And Column G is the date of the transaction, right?

12 A Yes.

13 Q So there are many items on this list, and we don't have
14 time to go through them all, so I'm just going to highlight
15 a few.

16 A Okay.

17 Q Row 10 is a transfer of tokens worth about \$135,000.

18 Do you see that?

19 A Yes.

20 Q That's transferred from a Celsius wallet to defendant's
21 wallets on November 24th, 2021. You see that?

22 A Yes.

23 Q Okay. And this is more than eight months after you
24 resigned, right?

25 A Yes.

1 Q Okay. The description says, "Believe this was spent on
2 legal bills."

3 A Yeah.

4 Q So you used -- let's see, and in fact, you believe you
5 paid this amount to the Kaiser Saurborn firm, the firm that
6 represented you, I guess, two law firms before Mr. Roche?

7 A No, I had paid -- I had paid them already.

8 Q Who did you pay with this amount?

9 A I paid Roche Freedman at the time a payment and I
10 believe the -- what was their name? I'd also owed like
11 \$70,000 to the law firm that was in between Kaiser and
12 Roche.

13 Q Quinn Emanuel?

14 A Yeah.

15 Q Okay. And you were paying these lawyers to represent
16 you in disputes with Celsius, right?

17 A Yes.

18 Q You were going into Celsius wallets taking assets and
19 using them to pay legal fees to litigate against Celsius, is
20 what you're doing right?

21 A We weren't in litigation yet.

22 Q Okay. Cells I -6 to -8 reference an investment into
23 Nifty seed round. There are transactions of \$200,000 each
24 associated with the Nifty's investment here for a total of
25 \$600,000; do you see that?

1 A Yes.

2 Q Okay. And this is an equity investment in Nifty's,
3 right?

4 A Yes.

5 Q And that stake in Nifty is acquired with the \$600,000?
6 It's currently held personally in your name, right?

7 A Correct.

8 Q Originally you bought it through a company that's
9 wholly owned by you and then you transferred it to your
10 name, right?

11 A Correct.

12 Q And it remains in your name to this day?

13 A Correct.

14 Q ERC-20 tokens in this chart are indicated as having
15 been spent on expenses in 48 of the rows on the workbook.
16 In Column I, you sometimes indicate that you believe that
17 associated ERC-20 tokens were used to pay single time
18 external developer contractor.

19 A Yes.

20 Q Right? For example, Row 12 has that description with
21 respect to tokens worth about \$99,897?

22 A Yes.

23 Q And it was transferred from Celsius wallets on February
24 2nd, 2021?

25 A I believe so.

1 Q And you believe that amount was transferred to a single
2 time contractor, but you aren't sure, right?

3 A If I remember correctly, when I was looking at the
4 ether scan for this specific item, this was a transfer to a
5 wallet held by one of the other KeyFi employees, and that --
6 or Celsius KeyFi employees, and he was responsible for
7 paying a bunch of single time contractors that we were using
8 for different projects.

9 Q Let's go to page -- are you sure about that? Because I
10 do remember you testifying about that with respect to a line
11 item, but I don't think it was this one.

12 A I'm not sure.

13 Q Let me back up. There certainly were contractors that
14 you transferred ETH to that sitting here today, you have no
15 idea who they are, right?

16 A Other -- I don't know their real world identity. Yes.

17 Q Right. You met them on the internet and you never knew
18 who they were, right?

19 A Correct.

20 Q Okay. In a number of instances you indicate, "Believe
21 this was used to pay internal team members."

22 A Yeah.

23 Q Withdraw that. So the ERC-20 worksheet includes 73
24 rows of transactions, right?

25 A I think so.

1 Q And Row 75 sums the U.S. dollar value of the coins
2 subject to those transfers? Do you see that?

3 A Yes.

4 Q And it sums it at more than \$5.87 million, right?

5 A Yes.

6 Q Excluding the yellow highlighted rows, there's 61 ERC-
7 20 transfers, and those transfers sum to more than \$5.25
8 million, right?

9 A I believe so.

10 Q So this worksheet indicates 73 separate transactions in
11 ERC-20 tokens, and you can't point to a single email or
12 piece of paper in which Celsius authorized you to make one
13 of those transfers, correct?

14 A Correct.

15 Q Let's go to the third workbook, NFT Buys.

16 A Oh, no, sorry. That's not correct, because some of
17 these that were spent on expenses fall under the expenses
18 that were expenditures of Celsius KeyFi, not of regular not
19 of regular -- not of KeyFi, Inc. and those ones would have
20 been authorized and are authorized by the services agreement
21 because I was allowed to spend up to \$2 million on expenses
22 for Celsius KeyFi without other authorization.

23 Q And where do you get that? Where do you get that
24 authorization from? Where does that come from? Are you --

25 A -- services agreement.

1 Q You're interpreting the services agreement? Is that
2 what you're doing?

3 A I'm not interpreting it. It literally says that.

4 Q Right, you're saying you think that's what the services
5 agreement provides, right?

6 A It does. It says up to \$2 million of expenses, I don't
7 need other approval for.

8 Q Okay. And did you identify which of the transfers are
9 in that category and which are not in your spreadsheet?

10 A No, because at the time I didn't think that that was
11 the exercise, but I'd be more than happy to do that for you.

12 Q Let's go to the NFT Buys workbook. So this workbook
13 reflects the NFTs that were purchased from Celsius and that
14 were -- sorry, that were purchased from Celsius wallets and
15 that were transferred to KeyFi, right?

16 A Yes, and ETH amounts here would be reflected in the
17 prior two workbooks.

18 Q Okay. And let me just come back to the 73 separate
19 transactions for which you initially said you don't have any
20 document you can point to that says you're authorized.

21 You're saying that there may be some of those transactions
22 that you think are authorized by the contract -- by the
23 services agreement, right?

24 A Yes --

25 Q That what you're claiming?

1 A Because they don't --

2 Q I'm just asking you for yes or no at this point, sir.

3 You're claiming that some of them were --

4 THE COURT: Only one of you can -- hold on, Mr. Hurley. You

5 can ask the question and give the witness a chance to

6 answer. If you think he's not responsive, you can raise it

7 with me. I think he's being responsive. Don't interrupt

8 him when he's answering your question.

9 MR. HURLEY: Understood, Your Honor.

10 BY MR. HURLEY:

11 A Sorry, can you repeat?

12 Q It's okay. Sure. So of those transactions, the 73

13 ERC-20 token transactions, where originally said, yeah, I

14 can't point to a piece of paper I'm authorized, it's your

15 testimony that some of those transfers you believe are

16 authorized by the services agreement, right?

17 A Yes, because this workbook doesn't reflect just

18 transfers that were authorized early profit share versus

19 expenses. It reflects transfers that were made out of

20 Celsius ecosystem laws.

21 Q But you also acknowledge that some of the transfers in

22 the workbook ERC-20 are transfers that are not authorized

23 under the services agreement, right?

24 A They're not authorized under the services agreement as

25 expenses on behalf of Celsius KeyFi, yes.

1 Q Let's go to the NFT Buys workbook. And Paragraph 6 of
2 you swore an affidavit again you say this reflects the NFTs
3 that were purchased from Celsius wallets that were
4 transferred to KeyFi.

5 A Sorry, where am I looking?

6 Q It's paragraph --

7 A My affidavit.

8 Q Six of your affidavit. Yeah.

9 A Okay. Yes. "It reflects the" -- yeah. Yes.

10 Q Did I read it correctly? It reflects the NFTs that
11 were purchases from Celsius wallets that were transferred to
12 KeyFi? I'm sorry --

13 A Yes, you did read it correctly. This was meant to
14 reflect the NFTs that were purchased with -- from Celsius
15 ecosystem wallets. The assumption was that most of these
16 were transferred to KeyFi. I don't know and I think I
17 marked ones that weren't transferred to KeyFi, but this
18 sheet was meant to show all of the NFT purchases that were
19 made out of, like directly from Celsius ecosystem wallets at
20 the beginning.

21 Q That's a good clarification, right, because there were
22 some NFTs that you bought with ETH that you had transferred
23 out of the Celsius wallet to a defendant wallet and then
24 only purchased the NFT with that ETH after it arrived at the
25 defendant wallet, right? There's some purchases in that

1 category, right?

2 A Yes.

3 Q And the NFT Buys worksheet is intended to identify the
4 NFTs that you bought directly into the Celsius wallet and
5 then transferred out after it was purchased, right?

6 A I believe so, but are there any -- can I ask a
7 question?

8 Q I'll --

9 A Sorry.

10 Q I'll take care of the questions, Mr. Stone. Your
11 counsel can redirect. Okay. Now let's go down and look at
12 the amount spent on these NFTs. Okay, so if you Okay so if
13 you go down the Line 271, Column G. That sum is the U.S.
14 dollar value of the ETH paid for the NFTs that were
15 purchased, just the NFTs purchased into Celsius wallets at
16 the rate of exchange in effect at the time of the purchase,
17 right?

18 A Yes.

19 Q Okay. And it sums to a little more than, I guess, just
20 under \$1.8 million? Sound about right?

21 A Yes.

22 Q And some of the transactions you claim involved NFTs
23 that did not wind up or remain in the defendant's
24 possession. So for example, 34 of the rows are highlighted
25 in yellow, right?

1 A Yes.

2 Q And those ones you think stayed in and returned to a
3 Celsius wallet, right?

4 A Yes.

5 Q Okay. And one of the rows that's highlighted in red,
6 that's the Krissy Mashinsky transfer that I think you guys
7 mentioned before? At least, it is a transfer to Krissy
8 Mashinsky, right? You've identified it as that, right?

9 A And that specific NFT that I purchased, yes, ended up
10 in a wallet publicly labeled as owned by Krissy Mashinsky.

11 Q Okay. And then two of the rows are identified as in
12 custody of wallet beginning 0X9346?

13 A Yes.

14 Q And what is that wallet? Let me just ask a different -
15 - is that a defendant owner controlled wallet?

16 A Yes.

17 Q Okay. So the price paid for all these NFTs even
18 excluding all 37 of the highlighted ones I just went through
19 including 0X9346 which I guess we shouldn't have excluded,
20 is still more than \$1.6 million. Does that sound about
21 right?

22 A Sounds about right.

23 Q Okay. More than 975 ETH, right?

24 A Yep.

25 Q The description in Column J indicates with respect to

1 72 of the NFTs you indicate you still have them in 0X50?

2 A I believe so.

3 Q And that's a wallet owned or controlled by defendants,
4 right?

5 A Correct.

6 Q With respect to 144 of these NFTs, you indicate that
7 they were sold for ETH.

8 A Yes.

9 Q But you don't indicate the date of the sale right?

10 A Correct.

11 Q And you don't indicate the price you got for any of the
12 NFTs, right?

13 A Correct.

14 Q And you don't indicate what happened to the proceeds of
15 any of the NFTs that you sold, right?

16 A I didn't believe that was the exercise.

17 Q And you claim to have no idea the amount of the
18 proceeds that defendants received for the sale of the 144
19 NFTs, correct?

20 A When preparing the sheet, I did see the amounts. We
21 were under a time crunch and I didn't believe that including
22 those amounts was relevant.

23 Q I'm sorry. Let me ask the question again.

24 A Okay.

25 Q It's getting a little late in the day. You have no

1 idea sitting here today the amount of proceeds that
2 defendants received for the sale of the 144 NFTs, right?

3 A Sitting here today, no.

4 Q And you didn't include it in the worksheet, obviously,
5 right?

6 A Because I didn't believe that it was -- that was the
7 exercise.

8 MR. HURLEY: Your Honor, we'd like to send -- use
9 a demonstrative which is the same spreadsheet, but that is
10 organized in date order rather than the order in which it
11 was supplied to us by the defendants.

12 MR. ROCHE: No objection.

13 THE COURT: I didn't hear. Was there an
14 objection?

15 MR. ROCHE: No objection.

16 THE COURT: Okay. Go ahead. And a copy was
17 emailed to me. I believe this is the demonstrative that
18 your office, Mr. Hurley, forwarded to chambers and they in
19 turn forwarded to me?

20 MR. HURLEY: Yes.

21 THE COURT: -- that correct.

22 BY MR. HURLEY:

23 Q So I want to direct your attention to the screen, sir,
24 which again is a demonstrative that was prepared using your
25 spreadsheet. We just -- the way it was sent to us, it

1 wasn't sortable by date, so we had to insert our own column
2 that provided date in a format that allowed for sorting by
3 date. So it looks a little bit different, because there's
4 an extra column because we had to add that date column.

5 A Okay.

6 Q So I'm going to ask you a few questions about this. So
7 turning to the ETH workbook in the sorted by date version.

8 A Yeah.

9 Q Okay. So again, it looks like the first ETH transfer
10 in the workbook was September 9th, 2020. Do you see that
11 now?

12 MAN 1: We can't see -- the box is covering or --

13 MR. ROCHE: Can you just move the Zoom box to the
14 left side?

15 MAN 1: Don't have control of that.

16 THE COURT: Which column do you want to be able to
17 see?

18 MR. ROCHE: Whichever one Mitch is -- or Mr.
19 Hurley is asking about.

20 MR. HURLEY: Yeah, it's going to be the first row.
21 That's all. We're just looking for the first row and then I
22 guess maybe move it so you can see the numbers -- the row
23 numbers, I guess. Yeah.

24 MR. ROCHE: Okay.

25 MR. HURLEY: Think you got it --

1 THE COURT: Mr. Hurley, I understand that you're
2 using this as a demonstrative, but you should mark it as an
3 exhibit.

4 MR. HURLEY: Absolutely. What's our --

5 WOMAN 1: Seventy, I believe, be the next --

6 MR. HURLEY: Plaintiff's Exhibit 70, Your Honor.

7 (Plaintiff's Exhibit 70 was admitted into
8 evidence.)

9 THE COURT: Okay. And just explain, it's a
10 demonstrative exhibit, adding a date -- Column H, the fixed
11 date so that you could sort in day order; am I correct about
12 that?

13 MR. HURLEY: Exactly correct.

14 THE COURT: All right. Go ahead, Mr. Hurley.

15 MR. HURLEY: Okay.

16 BY MR. HURLEY:

17 Q So can you see now if you look at the first ETH
18 transfer in the workbook is September 9th, 2020. See that?

19 A Yeah.

20 Q Okay. And the last ETH transfer in the workbook is
21 September 13th, 2021.

22 A Okay.

23 Q Wait, I'm sorry, 2022. September 13th, 2022. See
24 that?

25 A I do.

1 Q Okay. And between those dates, excluding transactions
2 highlighted in yellow, you transferred ETH out of Celsius
3 wallets and to or for the benefit of defendant's wallets
4 worth approximately \$3.85 million. Sound about right?

5 A I guess.

6 Q And September 13th, 2022 is 18 months after you
7 resigned?

8 A Yes.

9 Q And you used your access to Celsius' private keys in
10 September of 2022 to take assets out of Celsius' wallet; is
11 that right?

12 A No, I wrote unaware of this address.

13 Q You mean you don't know who the destination address is
14 on September 22? Sorry, in -- on September 13th, 2022?

15 A At the time I was looking at this, I believe that
16 that's what this would indicate.

17 Q Okay. But just as a reminder, in your sworn affidavit,
18 you said this workbook reflects ETH based transfers of
19 assets from Celsius wallets to wallets controlled by
20 defendants. Is it your belief that this particular transfer
21 is not consistent with Paragraph 4 of your affidavit?

22 A Well, as I said, there's many highlights that say that
23 there were things that were returned to Celsius. So
24 obviously this workbook includes things that weren't
25 transferred to me.

1 Q But this one isn't highlighted, right? You think it
2 should have been? Is that what you're saying?

3 A No. So the yellow highlights indicate that I know that
4 it was returned to Celsius or a Celsius ecosystem wallet
5 because of other transfers that those wallets were connected
6 to for other Celsius accounts, unaware of this address is
7 something that is more like, I don't know what this transfer
8 is. I can't identify if it's definitely something that
9 Celsius did or not.

10 Q So it's possible you did it. It's possible Celsius did
11 it. Is that what you're saying?

12 A I don't think it's possible -- I guess that's what I'm
13 saying.

14 Q Okay. During the period after your resignation email
15 on March 9th, 2022, based on this spreadsheet and the
16 demonstrative, you use Celsius' private keys to make at
17 least 27 separate transfers of ETH, right? That was after
18 you resigned from Celsius, correct?

19 A If that's the number.

20 Q Okay. So of the 71 supposedly authorized transfers
21 listed in this workbook, about 40 percent of them occurred
22 after you no longer work for Celsius, right?

23 A I don't know if I categorize them in that way but,
24 okay.

25 Q And during the period after you resigned, you

1 transferred about 304 ETH to defendants, which was worth
2 more than half a million dollars at the time, right? After
3 you resigned.

4 A That may be the case.

5 Q That's worth more --

6 THE COURT: Mr. Hurley, I'm looking at Column H,
7 Row 73. The total of \$3,949,803.45. Does this sheet
8 reflect a net value if you exclude the line items that would
9 show a return to Celsius?

10 MR. HURLEY: Your Honor, we didn't want to change
11 the spreadsheet in any way other than reorganize it by date,
12 so we did not add that. We did the math on our own.

13 THE COURT: Go ahead.

14 MR. HURLEY: I mean, using the Excel obviously.

15 BY MR. HURLEY:

16 Q Okay. Let's go to the ERC-20 transfers workbook in the
17 demonstrative. The transfers in this workbook you can see
18 span from September 9th, 2020 through December 17th, 2021.
19 Do you see that?

20 A Yeah.

21 Q Okay. And during that period, you transferred ERC
22 tokens from Celsius wallets to or for the benefit of
23 defendant's wallets worth more than \$5.25 million, if you
24 exclude the yellow highlighted. Does that sound about
25 right?

1 A No, because some of the expense lines would have been
2 expenses pertaining to Celsius KeyFi LLC, not KeyFi, Inc.

3 Q But you didn't identify which those are in the chart,
4 right?

5 A Again, I wasn't told that was the purpose of the
6 exercise.

7 Q And that's not how your sworn affidavit describes what
8 the workbook provides, either. Right? Let me remind you
9 what your sworn affidavit says. Paragraph 5. "The second
10 workbook is entitled "ERC Transfers To and From Interested
11 Addresses. It reflects the ERC-20 tokens that were sent
12 from Celsius wallets to wallets controlled by defendants."

13 A Yes.

14 Q Did I read that correctly?

15 A And I believe 30 minutes ago I actually specifically
16 said this one probably is wrong and it should say to wallets
17 not controlled by plaintiffs.

18 Q So your affidavit is incorrect. That's what you're
19 saying? It's not complete, anyway. That what you're
20 saying?

21 A I believe this was a mis-write.

22 Q Okay. December 17th, 2021, the date of the last
23 transfer listed here, that's more than nine months after you
24 resigned, right? December 17th, 2021.

25 A December 17th. Yes.

1 Q And after sending your March 9th resignation letter,
2 this workbook indicates that you caused 17 separate
3 transfers from Celsius wallets and three of those you
4 contend were transfers that were ultimately returned to
5 Celsius, right, the yellow transactions?

6 A I think it was more than three but --

7 Q Well, your counsel advised in their cover email that
8 they identified highlighted in yellow the transfers that
9 they believe were returned to Celsius.

10 A I believe it's three transfers after March 9th, it
11 looks like.

12 Q Okay. And after your March 9th resignation email, you
13 made transfers out of Celsius wallets at least 14 times, not
14 including those yellow highlighted, right?

15 A I believe so.

16 Q Would you be surprised to learn that the value of those
17 14 transfers made after your resignation totals more than
18 \$3.5 million?

19 A Surprised to learn -- I don't think I'd be surprised to
20 learn that.

21 Q The total dollar value of the ERC-20 tokens transferred
22 according to your chart sums to a little over 5.8 million.
23 You see that?

24 A Not counting the things returned to Celsius, yes.

25 Q Okay. Almost 65 percent of the ERC token value that

1 you transferred from Celsius wallets to defendant's wallets
2 is in respect of ERC tokens that were transferred after you
3 resigned from Celsius. Were you aware of that?

4 A Yes, but that includes the Dai which was not
5 transferred to me by Celsius.

6 Q Let's go to the NFT Buys worksheet -- workbook. Okay.
7 And there are 269 NFT purchases listed here, right?

8 A I believe so.

9 Q The first one is purchased on January 5th, 2021 and the
10 last one on May 4th, 2021.

11 A Okay.

12 Q Do you see that?

13 A Yes.

14 Q During that period, you used ETH worth almost 1.6
15 million to purchase NFTs that you then transferred to the
16 defendants, right, excluding the yellows?

17 A I believe so.

18 Q And you caused Celsius wallets to purchase 88 of the
19 NFTs on or after your March 9th resignation from Celsius,
20 right?

21 A Yes.

22 Q You spent almost 300 ETH on those post-resignation
23 NFTs?

24 A If that's the number, then yes.

25 Q Collectively worth more than \$540,000?

1 A Sounds right.

2 Q About one-third of the ETH that you caused to be
3 transferred out of Celsius wallets to purchase NFTs into
4 Celsius wallets -- sorry, out of Celsius wallets to purchase
5 NFTs was spent by you after you quit Celsius, right?

6 A I'm not sure if that's the number.

7 Q So based on these workbooks together and excluding the
8 yellow, you transferred 3.8 million worth of ETH, 5.25
9 million worth of ERC-20 tokens, and NFTs that you used
10 nearly \$1.6 million in ETH to purchase. Does that sound
11 about right?

12 A I think that there's a little double counting when it
13 comes to the NFT buys and ETH transfers, but I think it's
14 probably 80 to 90 percent of that number.

15 Q No, sir, we established that the NFT Buys worksheet was
16 for NFTs that were purchased into a Celsius wallet. The ETH
17 transfers by definition are transfers of ETH out of Celsius
18 wallets to defendant's wallets which you sometimes described
19 as then having been used to buy NFTs, right?

20 A Yes, but some of the NFTs purchases in those
21 defendant's wallets were wallets were actually sent back to
22 0XB1 and then sent out to 0X50.

23 Q The yellow highlighted ones you're talking about?

24 A No.

25 Q Okay. But ultimately they ended up at 0X50 anyway?

1 A I believe so.

2 Q Okay. So all in, between these three spreadsheets,
3 it's a total of nearly \$11 million, right?

4 A Again, I think there's a little double counting, but
5 let's call it at least 10.

6 Q Okay. Let's go back to PX-69 which is the non-date
7 sorted version of this chart, and I want to go to Row 2,
8 please.

9 A Of which workbook?

10 Q Sorry, it is the ERC-20 workbook. Row 2 of the ERC-20
11 workbook.

12 A Okay.

13 Q Okay. So you see there's a transfer from the Celsius
14 0XB1 wallet in September of 2021 of one point -- sorry,
15 1,401,662.9 Dai. You see that?

16 THE COURT: I don't -- where are you referring?
17 I'm sorry. Please tell me where you're referring.

18 MR. HURLEY: We should be -- are we back in the --
19 is it Row 2?

20 THE COURT: Okay.

21 MR. HURLEY: So Row 2 should be a transfer of Dai.
22 I'm sorry, Your Honor, I can't really see it from here. Is
23 that the right row? Oh, no. Yeah. Row 2. Row 2 is what
24 we're --

25 THE COURT: Yeah, it shows Dai.

1 MR. HURLEY: Yeah. Okay.

2 BY MR. HURLEY:

3 Q So Row 2 indicates a transfer from the Celsius 0XB1
4 wallet to defendant's wallets of 1,401,662.90 Dai. You see
5 that now?

6 A Yeah.

7 Q Okay. And Dai is a stable coin, right?

8 A Correct.

9 Q So that's equivalent to \$1.4 million?

10 A Yes.

11 Q The date is September 21, 2021?

12 A Yes.

13 Q More than six months after you resigned from Celsius,
14 right?

15 A Yes.

16 Q And almost six months since you received Celsius' March
17 26th direction to turn over the seed phrase and password for
18 the Celsius wallets, right? On March 26th, we looked at
19 that document, remember?

20 A Yes, but turnover doesn't make sense.

21 Q Okay. And you didn't turn over the keys, right? You
22 didn't turn them over until you were directed to pursuant to
23 this Court's order last month?

24 A They already had the keys.

25 Q Right, but you turned -- you did, too, right?

1 A Yes.

2 Q Okay. And you didn't return the seed phrase and
3 destroy the seed phrase or -- you maintained access to the
4 seed phrase and the pass code beyond the March 26th letter,
5 right?

6 A Correct.

7 Q Okay. And even you -- sorry. Back up. And on
8 September 21st, 2021 you used your access to those, to the
9 seed phrase to access the 0XB1 wallet and take the 1.4
10 million Dai, transfer it out of the wallet, right?

11 A Yes.

12 Q Okay. And even you don't characterize or wouldn't
13 characterize that transfer, the \$1.4 million transfer as
14 having been authorized, right?

15 A Authorized and not authorized transactions refer to
16 coins that were given to me by Celsius.

17 Q Right. You didn't give anyone at Celsius notice before
18 you used their private key to go into their wallet and take
19 \$1.4 million out, right?

20 MR. ROCHE: Objection.

21 BY MR. HURLEY:

22 Q You did that without providing them any notice?

23 THE COURT: Objection is overruled.

24 BY MR. HURLEY:

25 A I didn't inform anyone that the Dai was in there before

1 I moved it, no.

2 Q Right. You provided no notice to Celsius in advance
3 that you were going to use that private key and go in and
4 take that \$1.4 million out of the 0XB1 wallet, correct/

5 A I'm not sure why would have.

6 Q I'm just asking you if you did, and I understand the
7 answer to be no, you did not. Is that right?

8 A Correct?

9 Q The way you see it, right sir, you took that money as
10 an advance on the damages that you think you're entitled to
11 in this litigation, right?

12 A No.

13 Q Okay. Let's go to your deposition.

14 A What page?

15 Q 218.

16 THE COURT: Are you still looking at the
17 spreadsheet?

18 MR. HURLEY: We can take the spreadsheet down for
19 now, Your Honor.

20 BY MR. HURLEY:

21 Q Okay, 218, Line 5.

22 "Q So what you were saying, I guess, is that you believe
23 because you lobbied for the compensation to be paid to its
24 victims that you in a sense earned some part of what
25 actually was paid to redress the harm that was suffered by

1 folks like Celsius as a result of the hack?

2 "A No, I definitely did not -- no, definitely not. I do
3 not.

4 "Q You are taking an advance on the damages you think you
5 are entitled to in this dispute with Celsius?

6 "A Correct."

7 A I think --

8 Q No question.

9 THE COURT: No question.

10 BY MR. HURLEY:

11 Q Did I read that testimony correctly, sir?

12 A You read that line correctly.

13 Q Okay. And you understood that you were under oath at
14 your deposition just as you are today?

15 A I do.

16 Q Okay. So after taking the 1.4 million Dai out of the
17 0XB1 wallet, you converted it into ETH, right?

18 A Yes.

19 Q And transferred that ETH through an on-chain mixer
20 called Tornado Cash, right?

21 A Yes.

22 Q You're aware that OFAC has banned Tornado Cash based on
23 its frequent use to launder the proceeds of cybercrimes?

24 A That occurred about nine months after this event.

25 Q And because you used Tornado Cash, the ultimate

1 destination of the transfers of the \$1.4 million worth of
2 ETH is not visible on the blockchain, right?

3 A Correct.

4 Q That's the point of Tornado Cash, right, to conceal the
5 destination of transfers from the blockchain so the public
6 can't know or so that the ultimate destination is known only
7 to the person sending the ETH? I'll withdraw that question.
8 Before Tornado Cash was banned by OFAC, you used it
9 regularly, right?

10 A I used it a bunch of times. I don't know about if
11 regularly.

12 Q For example, on May 23rd, 2021 you used Tornado Cash to
13 transfer 100 ETH from the defendant's 0X50DD wallet, right?

14 A Yes.

15 Q And on the same day, you used Tornado Cash to transfer
16 another 100 ETH the defendant's 0XFC2 wallet, right?

17 A That may be.

18 Q And another 100 ETH on May 25th, you transferred from
19 the 0XFC2 wallet through Tornado Cash, right?

20 A Sounds correct.

21 Q And on the same day, you used Tornado Cash to transfer
22 a total of 20 ETH out of the 0X50DD wallet, right?

23 A Sounds correct.

24 Q On October 12th, 2021 you made two separate transfers
25 of 100 ETH each from 0X50DD to Tornado Cash as well, right?

1 A Sounds correct.

2 Q And you sent nearly three dozen separate transfers of
3 ETH from Tornado Cash through 0FXC2 and the 0X50DD wallet
4 between November of 2021 and January of 2022; does that
5 sound right?

6 A I think so. I stopped using Tornado Cash after I was
7 asked to during mediation.

8 Q I want to come back to the 1.4 million Dai that you
9 took from Celsius and then sent through Tornado Cash. So
10 eventually that ETH was withdrawn from Tornado Cash, right?

11 A I believe so.

12 Q Well, you know it because you did it, right?

13 A Yeah. Well, no --

14 Q No question pending, sir. And --

15 THE COURT: Well -- hold. Stop.

16 MR. HURLEY: Okay.

17 THE COURT: You (indiscernible) your prior answer,
18 Mr. Stone?

19 THE WITNESS: I wasn't necessarily the one that
20 removed it from Tornado Cash for all of those transfers.
21 They were, I believe, all removed from Tornado Cash. Some
22 of them to me, some of them to my other cofounders as
23 discussed in the deposition.

24 THE COURT: All right.

25 BY MR. HURLEY:

1 Q So you drew you think a little less than half of the
2 \$1.4 million to wallets owned or controlled by you, right?

3 A Yes.

4 Q And you believe you did that in the last two weeks of
5 October through the end of December 2021, right?

6 A I think so.

7 Q So you withdrew about \$600,000 to \$700,000 worth of ETH
8 at that time for yourself, right?

9 A Yes.

10 Q And you know now that you don't have that \$600,000 or
11 \$700,000 anymore, right, but you aren't quite sure what
12 happened to it, right?

13 A I haven't tracked that specific money as it relates to
14 any other monies that I have.

15 Q Well, you know you spent most of it, right, you just
16 don't know what you spent it on, right?

17 A Well, I spent it on a bunch of different things but
18 yeah.

19 THE COURT: Let me ask you Mr. Hurley, how much
20 longer do you anticipate your cross examination?

21 MR. HURLEY: Fifteen minutes or less.

22 THE COURT: All right, go ahead. We're going to
23 do -- well, go ahead with your examination.

24 MR. HURLEY: Okay.

25 BY MR. HURLEY:

1 Q And the other half, the other half of the 1.4 million
2 Dai, that wound up going to three of your cofounders, right?

3 A Correct.

4 Q And those people are named Dennis Reichelt, Lukasz
5 Krol, and Maciej Zaleski?

6 A Close enough.

7 Q Okay. And you divided the approximately \$700,000
8 evenly between them?

9 A I believe so.

10 Q And you have no idea whether they still have any of
11 that \$700,000 worth of ETH, right?

12 A I know one of them used their share for part of a down
13 payment of a house. Another one think bought a vehicle and
14 then something else. And I don't know what the third one
15 did with his.

16 Q So you withdrew the half of the 1.4 million Dai to
17 yourself, you said, between October and December of 2021,
18 right?

19 A I believe that's correct.

20 Q You filed a tax return for 2021, sir?

21 A Correct.

22 MR. ROCHE: Objection, relevance.

23 THE COURT: Overruled. Go ahead.

24 BY MR. HURLEY:

25 Q Did you report that \$600,000 worth of Dai as income on

1 your 2021 tax return?

2 MR. ROCHE: Objection, relevance. I believe under
3 New York law --

4 THE COURT: Overruled. Overruled.

5 BY MR. HURLEY:

6 Q I didn't declare Dai because I didn't transfer myself
7 Dai.

8 A Did you transfer -- did you declare on your income tax
9 return for 2021 the value of the cryptocurrency that you
10 admit you took off of the Celsius -- out of the OXB1 for
11 yourself in the year 2021? Did you include that on your tax
12 return?

13 A Some of that ETH, yes.

14 Q Some of it?

15 A Yeah.

16 Q So how much?

17 A Any ETH that I sold for fiat on a -- on my Gemini
18 account, which is my one centralized exchange account that's
19 tied to my U.S. Bank accounts, I declared every dollar of.

20 Q And how much was that?

21 A I don't know off the top of my head.

22 Q Okay. And in 2020, you testified that you used Celsius
23 property to repay a loan in a similar amount, \$600,000 or
24 so, right?

25 A I actually believe it was January 1, 2021.

1 Q Okay. Did you declaring your income taxes as income
2 repayment of that loan in 2021?

3 A That would not be income.

4 Q So you didn't declare it?

5 A It's not income.

6 Q I'm just asking whether you included in your tax return

7 --

8 A It's not something that would be declared in a tax
9 return.

10 Q So you didn't include it in your tax --

11 A It's not something that would be declared on a tax
12 return.

13 Q Okay. Did KeyFi file a tax return for 2021?

14 A No.

15 Q Did it file a tax return for 2020?

16 A Yes.

17 Q How much income did KeyFi declare in its tax return in
18 2020?

19 A Income? I think zero. (indiscernible).

20 Q Why do you think that?

21 A Because the expenses in 2020 were greater than its
22 revenues. So income would've been zero or negative.

23 Q So KeyFi was responsible for paying its own expenses,
24 correct? That's why you would deduct them as expenses from
25 income?

1 A KeyFi, Inc. was responsible for paying its own
2 expenses. Yes, I believe.

3 Q Okay. Let's go to --

4 MR. HURLEY: And I'm very close to wrapping up,
5 Your Honor.

6 BY MR. HURLEY:

7 Q Let's go to Plaintiff's Exhibit 4.

8 A Four?

9 Q You know what, that doesn't sound right.

10 A I don't know if I have a four.

11 Q It's not in your binder, but going to bring you --

12 A Okay.

13 MR. HURLEY: May I approach, Your Honor?

14 THE COURT: Yes, go ahead.

15 BY MR. HURLEY:

16 Q Plaintiff's Exhibit 4 is a document that you helped to
17 prepare, right?

18 A I believe so, yes.

19 Q Dennis Reichelt, the fellow we just referenced also
20 helped prepare this document, correct?

21 A I believe so.

22 Q He's one of the people that got a third of the \$700,000
23 worth of Dai?

24 A Yes.

25 Q And he's somebody you consider a cofounder of your

1 company, right?

2 A Yes.

3 Q And you reviewed this document, Plaintiff's Exhibit 4,
4 at the time for accuracy and concluded that it was accurate
5 as of April 5, 2021, right?

6 A To the degree that I'm able to conclude that this is
7 accurate, sure.

8 Q And I'm going to ask you a few questions to make sure I
9 understand the information that's being presented.

10 A Okay.

11 Q So asset is the list of the various kinds of tokens,
12 right?

13 A Yes.

14 Q And the price is the price of that token as of April
15 5th?

16 A 2021, yes.

17 Q Yep. And tokens loose refers to individual tokens of
18 that type that were sitting in the wallet, right?

19 A I believe so, yes.

20 Q Tokens LP refers to the number of that type of token
21 that was then deployed in a liquidity pool, right?

22 A Yes.

23 Q There's a note at the bottom that says, "We are missing
24 around 30,000 to 40,000 ETH from the remaining company
25 quoted principal."

1 A Yes.

2 Q You see that? And the document indicates that the ETH
3 is missing due to swaps and permanent loss and fees. Do you
4 see that?

5 A The ETH is missing from the 0XB1 and associated wallet,
6 yes.

7 Q Okay. And at least 80 percent of that missing ETH and
8 potentially more was due to impermanent loss, right?

9 A Perhaps, but it was to be expected.

10 Q Can you go to Page 87 in your deposition transcript
11 please, sir? Eighty-seven, Line 20. Let me know when
12 you're there.

13 A Yes, I'm here.

14 "Q But sitting here today, can you identify of the 30,000
15 to 40,000 ETH that are referenced on this page, the amount,
16 the number that was missing due to impermanent loss as
17 opposed to the other causes that are identified?

18 "A I would say over 80 percent was impermanent loss,
19 potentially more."

20 Did I read that correctly, sir?

21 A Yes.

22 Q Okay. And you understood your deposition you were
23 under oath just as you are here today?

24 A Yes.

25 Q It also says in the note "DeBank, Zapper are missing

1 several platforms we have high stakes in like 20,000 ETH on
2 Unslashed, 50,000 on dYdX long positions, et cetera." Do
3 you see that?

4 A I do.

5 Q And by this, it's meant that positions on those
6 identified platforms wouldn't be visible through DeBank or
7 Zapper, right?

8 A I think so.

9 Q And let's go to Paragraph 8 of your affidavit please.

10 A Okay.

11 Q Paragraph 8 in your sworn affidavit says, "Celsius was
12 able to easily monitor in real time the use and deployment
13 of crypto assets associated with the 0XB1 wallet through an
14 online application called DeBank." Do you see that?

15 A I do.

16 Q DeBank -- the DeBank reference in your Paragraph 8 is
17 the same DeBank that's referenced in the note to Plaintiff's
18 Exhibit 4, correct?

19 A Yes.

20 MR. HURLEY: Can I have a moment to confer with my
21 colleagues, Your Honor?

22 THE COURT: Yes, go ahead.

23 BY MR. HURLEY:

24 Q Just quickly to follow up on the -- two quick
25 followups. So first, you mentioned in your testimony

1 earlier that before you left Celsius you downloaded your
2 email files from Celsius, right?

3 A I created a backup of my inbox.

4 Q So you downloaded all of the emails in your inbox
5 except that you think there was a couple months missing?

6 A Yeah, because of a computer changeover at the end of
7 2020.

8 Q Got it. But other than those couple of months, you
9 have, at least the best of your knowledge, you have all
10 emails that were in your inbox at the time that you
11 downloaded that -- those files?

12 A I have all of the emails that were in my Mac mail
13 application inbox, which should have been all of the ones
14 from the main Gmail, yes.

15 Q Okay. And what months were missing?

16 A I think that it was some from October and November, but
17 I'm not sure. It was only 2020, I think.

18 Q And why do you think there -- you seem to have --

19 A They were like two- or three-week gaps, twice, so I
20 don't know why they were there.

21 Q Okay. And then coming back to the question about tax
22 returns again sir. You indicated that that you declared his
23 income some of the value that you took off -- sorry, that
24 you withdrew from Tornado Cash in 2021 but not all, right?

25 A I'm not sure if it was Tornado Cash related. Any ETH

1 that I ended up converting to fiat using the fiat rails that
2 I have access to here in the United States I declared as --
3 on my tax returns.

4 Q I'm sorry, I'm asking a specific question related to
5 the approximately, you know, 700,000 -- sorry. The half of
6 the 1.4 million that you say you withdrew for yourself. I'm
7 just confining myself to that right now, okay?

8 A Okay.

9 Q And I think you said before that you declared some but
10 not all of that right?

11 A Yes, if I remember correctly, some of that ETH I
12 transferred to Gemini to then sell for USD and then
13 transferred to my bank account and the sale of that ETH,
14 yes, I declared on my tax return. Other ETH that I didn't
15 convert to cash, I believe that I used it on other expenses
16 and such. So I'm not sure what which parts of it were
17 declared and which weren't.

18 Q Okay. You know some and you know it was less than all,
19 but you're not sure what the amounts are, right?

20 A Correct. I know that any amounts that I turned into
21 USD fiat on Gemini, I declared on my tax returns.

22 Q Gemini is an exchange?

23 A Correct.

24 Q Okay.

25 MR. HURLEY: Okay. Nothing further, Your Honor.

1 THE COURT: All right. Mr. Roche, you going to
2 have redirect?

3 MR. ROCHE: I will. Your Honor, I don't know how
4 late you want to go 'til. It would be helpful if I had -- I
5 have a few exhibits I just need to find. I think if Your
6 Honor --

7 THE COURT: I just want -- can you give me an
8 estimate of how much time?

9 MR. ROCHE: I think it could be up to 45 minutes.
10 I think I can -- if Your Honor would, I think I could
11 shorten that substantially if we came back tomorrow morning
12 and did that and closings.

13 THE COURT: I really would like to finish the
14 testimony today and have closings in the morning.

15 MR. ROCHE: Okay. If Your Honor -- I have to dig
16 up a few exhibits. If I can have five minutes now, I think
17 I can come back and try to get it done in under a half an
18 hour.

19 THE COURT: All right. We're going to do that.
20 I'm going to give you a hard stop on the examination of six
21 o'clock. We're going to finish the testimony today by six
22 o'clock. It's 5:18 now. Let's resume at 5:25. Okay
23 (indiscernible), okay?

24 MR. ROCHE: Okay.

25 MR. HURLEY: Oh, Your Honor?

1 THE COURT: Go ahead, Mr. Hurley.

2 MR. HURLEY: Could we get an instruction to the
3 witness not to confer with counsel while --

4 MR. ROCHE: We won't.

5 THE COURT: The witness should not confer. And so
6 the -- my plan is to finish the test -- well, do you have a
7 rebuttal case Mr. Hurley or are you going to rest when this
8 is finished?

9 MR. HURLEY: We're not going to call any more
10 witnesses. We may seek some recross, conceivably, but I
11 obviously we haven't heard the --

12 THE COURT: Well, we'll see where we are. Let's
13 try and finish, if we can, with this witness.

14 (Off the record.)

15 THE COURT: All right, we're back on the record.
16 Mr. Stone is still on the witness stand. Redirect
17 examination. Go ahead, Mr. Roche.

18 CLERK: Judge, hold up. This --

19 THE COURT: Okay.

20 CLERK: -- the delay. We're good, we're good.

21 THE COURT: We're good? Okay. Thanks --

22 CLERK: We're good. Thank you.

23 REDIRECT EXAMINATION OF JASON STONE

24 BY MR. ROCHE:

25 Q Mr. Stone, going to ask you a few questions concerning

1 your cross examination. I'm going to hand you what's been
2 marked and admitted into evidence as Defendant's Exhibit 15.

3 A Go right ahead.

4 Q Mr. Stone, do you recognize this is an email chain
5 between -- do you recognize this document?

6 A Yes.

7 Q What is this document, just at a high level.

8 A It's an email chain between myself, Alex Mashinsky,
9 some of the KeyFi -- Celsius KeyFi people, some of the other
10 Celsius executives.

11 Q Got it. And I want to go down to your email on the
12 first page to the second email here. You write it. I'm
13 looking at the paragraph that says, "Does." "Does the
14 company have a documented process sheet for how it
15 determines booking earn versus realized revenues in crypto
16 fiat such as required to produce what is being asked?" Do
17 you see that?

18 A Yes.

19 Q Why did you ask for that?

20 A Because I needed to know how Celsius made accounting
21 determinations to give them what they were asking for.

22 Q Were you ever provided with such documentation?

23 A I think at times I was shown or told certain things,
24 but definitely never a complete picture.

25 Q And if you go to the paragraph above that. "Jason, we

1 do not book revenues. We are asking for weekly estimates,
2 which are about 80 percent accurate of the gains you
3 achieved on the AUM you manage." You see that?

4 A Yes.

5 Q And that's sent from Mr. Mashinsky?

6 A Yes.

7 Q Did you provide that information to the best of your
8 ability to Celsius during your time, first managing assets
9 under KeyFi and later under Celsius KeyFi?

10 A Yes.

11 Q Okay. And what was the format you provided that
12 information in?

13 A Sometimes in emails, but -- or it was written in
14 emails, but other times it was just screenshots from DeBank
15 or one of the other public trappers.

16 Q Okay. I want to the services agreement, not the old
17 services agreement, not the old services agreement, and I
18 just need to get my bearings on -- I believe that's in the
19 Binder Mr. Hurley handed you earlier, PX-41.

20 A Okay.

21 Q I want to see -- point you to Paragraph 4,
22 Compensation.

23 A Okay.

24 Q "As sole and exclusive compensation for the services
25 Celsius shall pay KeyFi consideration set forth in Schedule

1 Be attached hereto."

2 A Yep.

3 Q And when it says Celsius that's referring to Celsius
4 KeyFi?

5 A I think so.

6 Q And --

7 MR. HURLEY: Objection, Your Honor.

8 (indiscernible) the document says.

9 THE COURT: I'm sorry, I couldn't hear you, Mr.
10 Hurley. What --

11 MR. HURLEY: Sorry. Objection. It's not --
12 that's not how Celsius defined in the document -- define as
13 Celsius KeyFi, it's Celsius Network.

14 MR. ROCHE: I apologize, Your Honor.

15 BY MR. ROCHE:

16 Q If we can go to the top -- let's clarify that. At the
17 top, says "Celsius is defined" -- Celsius Network Limited
18 refers to Celsius, correct?

19 A Correct.

20 THE COURT: Celsius KeyFi is defined as KeyFi.
21 Celsius Network is Celsius.

22 MR. ROCHE: Yeah, I might have misspoke. I
23 thought that's what I said at the beginning.

24 BY MR. ROCHE:

25 Q Celsius Network Limited is defined as Celsius?

1 THE COURT: Ask your --

2 BY MR. ROCHE:

3 A Yeah. Yes.

4 THE COURT: That's what it says. Go ahead.

5 BY MR. ROCHE:

6 Q Mr. Mashinsky the CEO of Celsius Network Limited or
7 Celsius?

8 A That's what I believed, yeah.

9 Q Was he authorized to make decisions on behalf of
10 Celsius?

11 A I believe so.

12 Q Okay. I want to go to -- give me one second to find
13 it. If you can go to Page 6 of the services agreement.

14 A Okay.

15 Q And I'm looking at the third bullet down.

16 A Okay.

17 Q "KeyFi shall retain control of its internal budget and
18 profit and loss determination in good faith, notwithstanding
19 KeyFi shall obtain approval for any expenditures exceeding
20 50,000 or in a calendar year if recurring expenditure once
21 KeyFi costs \$2 million." You see that?

22 A Yes.

23 Q Is it your understanding you had permission under the
24 services -- what -- strike that. What's your understanding
25 of this provision?

1 A My understanding is that I could make or pay expenses
2 that were related to Celsius KeyFi LLC activities in the
3 amount up to two million per calendar year without asking
4 for further approval from anyone and in individual amounts
5 up to \$50,000.

6 Q All right, I want to refer you to PX-43 which is a
7 document Mr. Hurley was asking you about before.

8 A Okay.

9 Q On the first page here, this is the demand email Roni
10 sent you on March 26, correct?

11 A Okay, yes.

12 Q Did Mr. Roni ask you to destroy your copy of the 0XB1
13 seed phrase?

14 A He -- no, he said to provide the seed phrase.

15 Q Are you aware of any demand prior to the one entered
16 into -- the stipulation entered to into by this Court,
17 Celsius demanded you to destroy your copy of the seed
18 phrase?

19 A No.

20 Q Okay. Okay, let's go to -- believe this is Exhibit 40
21 -- PX-40. I don't know if this is in your binder or not.

22 A I don't have PX-40.

23 Q You don't have PX-40?

24 A No.

25 Q I'll give you a copy of it. I want to direct your

1 attention to the 16th page of PX-40 which --

2 THE COURT: What's the Bates --

3 BY MR. ROCHE:

4 Q -- the asset --

5 THE COURT: What's the Bates page at the end, the
6 last --

7 MR. ROCHE: Forty. PX-40, 0016.

8 BY MR. ROCHE:

9 Q Mr. Stone, let me take a step back. Do you recognize
10 this as the asset purchase agreement?

11 A It looks like a page from the asset purchase agreement,
12 yes.

13 Q Okay. And go to the bottom of the page. I'm looking
14 at 7.4(b)(i).

15 A Seven point -- 7.4 -- okay.

16 Q (b)(i). And it states -- I'm going to read it out
17 loud. "Within the later to occur of 14 calendar days after
18 any payment by a buyer due under this agreement or 30
19 calendar days after any such scheduled payment accrued, if
20 seller is dissatisfied with the payment or if nonpayment
21 occurs, seller may invoke the audit of buyer's relevant
22 records using seller's chosen auditor who shall be a CPA."

23 Do you see that?

24 A Yes.

25 Q Who is the seller in the -- for the asset purchase

1 agreement?

2 A KeyFi.

3 Q Who is the buyer?

4 A Celsius KeyFi.

5 Q After you resigned -- strike that. Are you the CEO of
6 KeyFi?

7 A KeyFi Inc., yes.

8 Q Had you ever -- did you ever demand an audit under this
9 provision in the asset purchase agreement?

10 A Many times.

11 Q When did you demand an audit?

12 A I think the first time was in the month that I
13 resigned.

14 Q Okay. We'll get to that in a second. Do you recall
15 any other times?

16 A Numerous times throughout 2021, probably monthly.

17 Q And has any Celsius entity ever provided you or your
18 counsel an audit?

19 A No.

20 Q Okay. Has Celsius ever provided you any accounting for
21 its claim that you lost -- that Celsius KeyFi was not
22 profitable?

23 A They provided me some documents which show certain
24 accounts that were supposed to be counted as part of our P&L
25 as being unprofitable.

1 Q Did they -- did you ever receive a full accounting from
2 Celsius?

3 A No.

4 Q Okay. I want to go, direct your attention back to PX-
5 40 --

6 THE COURT: May I ask you, Mr. Stone did you select an
7 auditor, an accountant to do the audit?

8 THE WITNESS: We talked to a couple of different firms, but
9 we were never --

10 THE COURT: Let me ask you a different question. Did you
11 specifically tell Celsius the auditor that you wished to use
12 to conduct the audit?

13 THE WITNESS: No, we didn't get to that stage. We asked for
14 an audit and they said they weren't willing to.

15 THE COURT: Go ahead, Mr. Roche.

16 BY MR. ROCHE:

17 Q And when did you make that demand, Mr. Stone?

18 A I believe the first time was at the end of March.

19 Q Okay. So let's go to -- I believe the document you're
20 referring to, let's -- PX-43.

21 A Okay. I want to look at the second page of PX-43.

22 Q Okay. This is a (indiscernible) sent -- do you
23 recognize this email?

24 A Yes.

25 Q What is this email?

1 A It's an email from me to Roni and Harumi and Alex and a
2 couple other people.

3 Q Why did you send this email?

4 A I sent this email because I wanted to create a record
5 of the response that was appropriate, given the email that
6 was sent to me prior.

7 Q Okay, and I'm going to read what you wrote. "I have
8 now returned over \$25 million in stables to the address 0XD2
9 since yesterday morning," and to confirm any -- to avoid any
10 doubt, what's the hyperlink there?

11 A That is a hyperlink to the list of transactions from
12 which -- or that include the stable coins that I sent to
13 this wallet address that Celsius provided me from 0XB1.

14 Q And you write -- I'll just read the email. "I'm doing
15 this in good faith while we work together on the following
16 items, agreeing the total population of remaining coins and
17 interest owed back to Celsius as well as a full accounting
18 of net profits due to the KeyFi team." Why did you write
19 that?

20 A So I wrote that because we didn't even have all the
21 information that we needed from Celsius in order to come up
22 with or figure out and accounting ourselves. There were a
23 number of different activities and strategies and accounts
24 that were supposed to be for Celsius KeyFi benefit or
25 Celsius KeyFi P&L that were not actually controlled or

1 retained by me, such as the purchases of, you know, ETH that
2 Celsius did in November 2020 during the compound liquidation
3 event as well as a number of other types of activities such
4 as hedging and others. And without knowing those costs, we
5 wouldn't be able to compute a KeyFi P&L and -- or Celsius
6 KeyFi P&L in full form without that data.

7 Q Did Celsius ever provide you with the full information
8 you needed to do to perform an accounting --

9 A No.

10 Q -- Celsius KeyFi?

11 A No.

12 Q Did you ask for it?

13 A Yes, many times.

14 Q And I want to go down on this email, further down on
15 this email. You write, paragraph further, "And I state for
16 the record, if there ends up being one that doing these
17 transfers piecemeal before having final audited records has
18 already and would continue to negatively impact" -- you list
19 out -- "Celsius' profits from this experiment, Celsius' true
20 margins above customer rate hurdle," and then number three,
21 "KeyFi team and its investors' share of profits." Why did
22 you write that?

23 A Because I believed at the time and I still believe
24 today that doing what they were asking me to do would have
25 made it more difficult to determine the totality of all of

1 these three items. Yeah. So -- can you repeat the
2 question? I'm sorry.

3 Q What was --

4 A what was the --

5 Q What was your reason for writing that?

6 A Because I wanted to indicate to Celsius that them
7 asking me to just, you know, blatant -- or you know,
8 blindfoldedly send back funds without, you know, properly
9 accounting for things was not the right move for any of us,
10 I thought.

11 Q Understood. You were in the room when Mr. Holert
12 testified earlier?

13 A Yes.

14 Q You heard Mr. Holert testify about conversation
15 concerning hedging, correct?

16 A Yes.

17 Q Did you have conversations with Mr. Holert about
18 hedging?

19 A Yes, many.

20 Q When were those conversations?

21 A Started probably end of August, early September 2020
22 through to March 2021.

23 Q Who did you understand --

24 THE COURT: -- beyond the scope of the cross
25 examination. You would have had an opportunity to examine

1 the witness about another witness's testimony during his --
2 you know, before.

3 MR. ROCHE: I understood, Your Honor, that the
4 direct, that the direct was limited to the affidavit and
5 introducing exhibits.

6 THE COURT: Go ahead, go ahead. Let's go.

7 BY MR. ROCHE:

8 Q Who did you understand was responsible for hedging?

9 A I don't know of a specific person but the same group
10 that was hedging Celsius' global activities.

11 Q What was the basis for that understanding?

12 A The fact that numerous people at Celsius told me that
13 HedgeGuard was the software that we used to compute what
14 hedges we needed to be entering.

15 Q Did you ever do any hedging yourself while either --
16 during your time as CEO of Celsius KeyFi?

17 A Yes, starting in late January after not getting any
18 information about the hedging that was supposed to be
19 happening, we did start to do some additional hedging on a
20 platform called dYdX, but it was not very efficient to do on
21 decentralized finance platforms -- or hedging is not
22 efficient to do on decentralized finance platforms. And we
23 didn't have access to centralized exchanges to do hedging,
24 so.

25 Q We heard testimony earlier from Mr. Holert that Celsius

1 could not hedge KeyFi's risks. Do you recall that
2 testimony?

3 A I do.

4 Q Do you agree with that testimony?

5 A No, I do not.

6 Q Why not?

7 A Because he indicated that they couldn't hedge the long
8 tail activities which was never the understanding or
9 agreement between myself and Celsius MainCo. The
10 understanding was that for the Bitcoin or Wrapped Bitcoin
11 and Ethereum that they were transferring to us, that they
12 would be hedging the price movements in totality, not
13 specifically hedges on individual liquidity pools or trades
14 and that could have been very simply done by just buying put
15 or call options on the Ethereum amount or Wrapped Bitcoin
16 amount sent to us.

17 It would have been more expensive to do it that way without
18 knowing the exact number of or ETH or Wrapped Bitcoin in
19 each liquidity pool, but I was told, the cost of hedging
20 would be -- like would hit KeyFi, Celsius KeyFi P&L. so you
21 know what I mean we all thought we were, you know, making a
22 crazy amount of money and it was a cost that I was willing
23 to incur.

24 Q. The cost of the hedging?

25 A Yes.

1 Q So I want to -- did you tweet about NFT purchases from
2 the 0XB1 Twitter account?

3 A Many times.

4 Q Did you do so in January of 2021?

5 A Many times.

6 Q Did you ever tweet about your -- out your purchases of
7 crypto punks from the 0XB1 wallet?

8 A Yes.

9 Q Okay. Briefly, have you used Tornado Cash since it was
10 banned by -- I forget the department --

11 A OFAC.

12 Q OFAC?

13 A No.

14 Q Okay. All right. I want to discuss a few of the
15 transactions on the spreadsheet. I want to discuss a few of
16 the transactions on the spreadsheet. I don't think we need
17 to pull up the spreadsheet. The first one, so you were
18 asked questions about payments to rent. Do you recall those
19 questions?

20 A Yes.

21 Q Okay. Why did you move? Why did you move from New
22 York to Puerto Rico?

23 A I was told sometime in either late September or early
24 October that I was going to have to leave New York State
25 because we didn't have a bit license and it wasn't -- I

1 think it was said it wasn't legal for me to be doing what I
2 was doing being based out of New York, so in order to comply
3 with regulations, I needed to either move to a neighboring
4 state or out of the country.

5 Q And whose request was that?

6 A It wasn't a request.

7 Q What --

8 A But I was told by my direct boss Harumi, and then later
9 Alex as well, but Harumi is the one that first told me I had
10 to move.

11 Q Okay. I want to go to the Dai transaction. So you
12 mentioned earlier the November liquidation event?

13 A Yes.

14 Q Can you describe to the Court what happened in the
15 November liquidation event?

16 A Sure. So on Thanksgiving Day in 2020 a malicious actor
17 attacked the compound platform by specifically attacking
18 coin base's AWS infrastructure which is what compound relied
19 on for its Dai price information. The result was the
20 attacker changing the AWS software's perception of the price
21 of Dai from \$1 to \$1.30. The net result of that was about,
22 I think it was \$120 million worth of positions in total that
23 were liquidated because Dai was artificially changed in
24 terms of its price, which put all of those positions
25 underwater.

1 Q Did Celsius suffer a loss as a result of that incident?

2 A No.

3 Q Why not?

4 A For two different reasons; one, because right at the
5 time that it was happening, I called Alex Mashinsky to tell
6 him that that had happened. I didn't know at the time that
7 it was malicious attack due to the price of Dai being
8 changed. I just knew that we had gotten liquidated and I
9 said, you know, we have to do something here. And he said
10 yes, let's repurchase that ETH on centralized exchanges.
11 You don't have enough cash or, you know, stable coins in
12 your account to repurchase all this ETH. He said let's get
13 Connor on the phone and over the next two hours, Connor and
14 I repurchased I think over 85 percent of the ETH -- the
15 number of ETH that were liquidated, mostly congregated on
16 centralized exchanges. I did a little of it on
17 decentralized exchanges, and we repurchased those ETH at a
18 lower price point than they were liquidated at because ETH
19 kept going down that day.

20 Q You performed open -- you and people at Celsius
21 performed open market operations and you were able to
22 purchase the Celsius at a lower price at which you were
23 liquidated?

24 A Purchased the Ethereum at a lower price, yes.

25 Q And you eventually lobbied the compound community to

1 airdrop a certain percentage of Dai back to certain wallets?

2 A Not to airdrop. I lobbied the compound community to
3 provide restitution from their insurance treasury to people
4 affected by the Thanksgiving liquidation event, because I
5 believe that it fell within the clauses of basically
6 irregular protocol activity which is what their insurance
7 module is for, and I, you know, believed that it was the
8 right thing to do for that insurance to be used to somehow
9 provide restitution to wallets affected by that Thanksgiving
10 liquidation event.

11 Q When did you do that lobbying?

12 A Started lobbying probably in January or February 2021
13 and didn't stop until the end of the summer.

14 Q And that was after you left Celsius KeyFi?

15 A I started lobbying before I left and continued lobbying
16 after.

17 Q Okay. When you took the 1.4 million Dai out of 0XB1,
18 did you believe it was Celsius' property?

19 A No, it's not.

20 Q Why not?

21 A Because it was not provided to me by Celsius.

22 Q Briefly, if you -- there was testimony earlier about
23 what is and isn't available on DeBank. Do you recall that
24 testimony?

25 A Yes.

1 Q Let me ask you, what information -- at the time you
2 were sharing the DeBank information with Celsius, what
3 information was on DeBank relating to OXB1 and what
4 information was not?

5 A I can't say specifically which names of platforms were
6 or weren't on there, but I'm pretty sure that we can safely
7 say that over 85 or 90 percent of all positions were, at any
8 given time were displayed on DeBank in terms of the total
9 AUM that Celsius had transferred to me and then the proceeds
10 thereof.

11 Q And -- sorry.

12 A I'm done.

13 Q And Celsius was able to monitor those -- that
14 performance in real time?

15 A I don't know if I'd say performance. They were able to
16 monitor the value of the AUM in those accounts.

17 Q And the value of different coins in those accounts?

18 A Yeah.

19 Q And the balance of different coins in those --

20 A Balance. Yes.

21 Q So you could look at DeBank and see how much Ethereum
22 was in a particular --

23 A Yes, and how many assets were in liquidity pools or et
24 cetera.

25 Q You could see how much -- how many stable coins were in

1 a particular pool? You could see the movement up and down
2 over time of a particular asset on DeBank?

3 MR. HURLEY: Objection, Your Honor. Leading.

4 THE COURT: Sustained.

5 BY MR. ROCHE:

6 Q What other types of information could you see on
7 DeBank?

8 A You could see accumulated but unclaimed rewards. You
9 could see NFT purchases. You could see -- there's a couple
10 other things that you can see. I'm not sure what's
11 relevant.

12 Q Could you see the balance of the crypto assets at the
13 time you logged into or clicked the DeBank link?

14 A Yes.

15 Q And could anybody see those positions?

16 A Yes, or the 85 to 90 percent of them that were
17 supported by DeBank. Yes.

18 Q Understood. Did you ever miss -- so for the portion
19 that was not available on DeBank, did you ever misrepresent
20 any of the information relating to those transactions to
21 Celsius?

22 A I don't believe so.

23 Q Okay. So I want to go to Defense Exhibit 24. It's a
24 spreadsheet.

25 MR. ROCHE: Your Honor, it's not -- I believe it's

1 one of the exhibits that you did not admit. I think you
2 stopped short at 23. I don't know if Your Honor has it
3 printed out or if --

4 THE COURT: Do not have it printed out.

5 MR. ROCHE: So Your Honor, because it's a
6 spreadsheet, we don't have full printouts on it. How would
7 you like us to show it to Mr. Stone so we can ask him some
8 questions to authenticate it? I could hand him a computer -
9 - pardon?

10 THE COURT: Do you have a copy of it?

11 MR. ROCHE: We have a copy of it and we can share
12 it on Zoom. We would just need Mr. Dan Stone to be made
13 host of a Zoom, so he could share it with the witness.

14 THE COURT: There's an objection to Exhibit DX-24.
15 What is the objection? Hearsay objection? Mr. Hurley, you
16 want to speak to your objection?

17 MR. HURLEY: Sorry, Your Honor. Yeah, we do
18 object to this one, Your Honor. It's hearsay, among other
19 things. So we stand on our objection.

20 MR. ROCHE: Your Honor, this was a summary
21 document created by KeyFi to show the accounting of the
22 KeyFi positions, the profits and losses, dollar -- we
23 believe it's a business record and it's exempt under --

24 THE COURT: Underlying -- 1006 requires that you
25 have made the underlying documents available to the other

1 side. Did you do that?

2 MR. ROCHE: We produced it in connection with the
3 expedited discovery.

4 THE COURT: You produced what? Did you provide
5 all of the underlying documents that are reflected in data
6 in Exhibit 24?

7 MR. ROCHE: I believe all the underlying documents
8 are publicly available -- were publicly --

9 THE COURT: That's not my question. That's not
10 the question.

11 MR. ROCHE: Under -- then we did not, Your Honor.

12 THE COURT: did you provide all of the underlying
13 documents.

14 MR. ROCHE: I'm being as direct -- the document,
15 there were no internal documents that were used to make
16 this. All the documents -- all the information provided in
17 the spreadsheet was taken from an internet browser. But we
18 did not provide specific --

19 THE COURT: -- thousand -- Federal Rule of
20 Evidence 1006, which was also a basis for the objection that
21 was asserted provides that "The proponent may use a summary
22 chart or calculation to prove the content of voluminous
23 writings, recordings, or photographs that cannot be
24 conveniently examined in Court. The proponent must make the
25 originals or duplicates available for examination or copying

1 or vote by other parties at a reasonable time and place and
2 the Court may order the proponent to produce them in Court."

3 Have you made all the relevant documents -- don't
4 tell me they're public, they're available somewhere. Did
5 you make them available to plaintiff's counsel? Yes or no.

6 MR. ROCHE: We did not provide the --

7 THE COURT: Objection --

8 MR. ROCHE: -- readout --

9 THE COURT: Objection sustained.

10 MR. ROCHE: Understood.

11 BY MR. ROCHE:

12 Q Mr. Stone, in connection with the affidavit you
13 submitted with the -- that was so ordered and that you
14 updated I believe in early January, do you recall what
15 spreadsheet I'm referring to?

16 A Yep.

17 Q There's a tab on that spreadsheet that identifies the
18 current location of all of KeyFi's assets. Are you --
19 broken down into two different tabs?

20 A Yes.

21 Q What are you doing -- have you spent or moved any of
22 those assets since this litigation began?

23 A Only yesterday.

24 Q Okay. And what did you spend it on?

25 A I sent \$100,000 to Freedman Normand.

1 Q Okay. For legal fees?

2 A Correct.

3 Q Besides that transaction, have you engaged in any other
4 transactions using the asset -- KeyFi's assets?

5 A I've not removed any other assets from those accounts,
6 no.

7 THE COURT: What was the authority to transfer
8 money -- transfer assets yesterday?

9 THE WITNESS: Sorry?

10 THE COURT: What was the authority that you were
11 relying on to transfer assets yesterday?

12 THE WITNESS: Authority?

13 THE COURT: Yeah.

14 THE WITNESS: I don't --

15 THE COURT: I thought the stipulation was nothing
16 was going to be transferred. Am I wrong?

17 MR. ROCHE: No, the stipulation, not -- I think
18 that's what the -- that's the, what's in dispute.

19 THE COURT: Well, I'll hear argument about it
20 tomorrow, then. Okay.

21 MR. ROCHE: No further questions.

22 THE COURT: All right. Mr. Hurley, any further
23 examination?

24 MR. HURLEY: Just --

25 THE COURT: -- okay if you don't.

1 MR. HURLEY: -- very briefly, Your Honor.

2 THE COURT: Go ahead.

3 MR. HURLEY: I'll be very brief.

4 THE COURT: Very brief. Go ahead. Everybody's
5 exhausted.

6 RECROSS EXAMINATION OF JASON STONE

7 BY MR. HURLEY:

8 Q I just want to come back to the 1.4 million Dai for a
9 minute. And I think you testified that Celsius wasn't
10 harmed by the hack, something to that effect?

11 A It should not have been.

12 Q Okay. And I'm going to direct your attention to your
13 deposition testimony, sir.

14 A Okay.

15 Q Page 214. Okay. And I'm here to read from Line 8 to
16 23.

17 A Yeah.

18 Q Question. Do me a favor and explain to me why you
19 think you had -- why you think that the 1.4 million Dai, you
20 had some claim to it?

21 A Sure. So the 1.4 million Dai was sent to the 0XB1
22 wallet directly from the compound treasury as a result of a
23 compound community DAO, decentralized autonomous
24 organization, vote relating to a hacking event that occurred
25 on Thanksgiving Day 2020 in which the 0XB1 address KeyFi and

1 Celsius KeyFi were materially affected."

2 Do you see that? Did I read that correctly, sir?

3 A Yes.

4 Q Okay. And you understood you're under oath at your
5 deposition just as you are today, right?

6 A I said materially.

7 Q I'm just asking you whether you understood your under
8 oath, sir.

9 A Yeah.

10 Q Okay. And that airdrop was to compensate for a loss
11 that was suffered by 0XB1, the Celsius wallet, right, sir?

12 A A loss suffered by that individual address, yes. That
13 does not necessarily mean Celsius KeyFi or Celsius or KeyFi.

14 Q Okay. Let me direct your attention to Page 217 of your
15 transcript, sir.

16 A Okay.

17 Q Question.

18 Q So the airdrop, though, that you are describing was to
19 compensate for a loss that was suffered by 0XB1 in
20 connection with the hack, right?"

21 A By 0XB1 --

22 Q Answer --

23 A -- individual address, yes.

24 Q Answer, "Yes." Do you see that?

25 A Yes.

1 Q Okay. And I asked those questions and you gave those
2 answers at your deposition?

3 A Yes.

4 Q Okay. You were paid a salary by Celsius, right, sir?

5 A During some of the time I was with them.

6 Q Right, including during the entirety of 2021 until
7 after you resigned, right?

8 A Yes.

9 Q Okay.

10 THE COURT: This does seem to be beyond the scope
11 of Mr. Roche's examination.

12 MR. HURLEY: Your Honor, I'll stop there. Thank
13 you.

14 THE COURT: Okay, thank you. Mr. Roche, do you
15 rest?

16 MR. ROCHE: I rest.

17 THE COURT: All right. Mr. Hurley, are you going
18 to call any rebuttal witnesses in the morning?

19 MR. HURLEY: No, Your Honor.

20 THE COURT: All right. We'll start at nine
21 o'clock with closing arguments.

22 MR. HURLEY: Query, Your Honor. Is that an in-
23 person event for the lawyers tomorrow? We're happy to do it
24 if you want us to.

25 THE COURT: Don't you like being in the courtroom?

1 MR. HURLEY: I'm happy to do it either way,
2 frankly. I live nearby, so it's not -- it doesn't really
3 affect me that much but --

4 MR. ROCHE: I live nearby (indiscernible) too, so
5 that's fine.

6 THE COURT: I didn't hear that comment.

7 MR. ROCHE: Your Honor, I just said that I live
8 nearby for purposes of tonight, too, so tomorrow morning the
9 courtroom is not an issue.

10 THE COURT: I think it would be best. I realize -
11 - you know, I feel a little badly since I'm not there, but
12 I'd like to have you both in the same room, let me put it
13 that way. All right?

14 MR. HURLEY: Absolutely.

15 THE WITNESS: Do I need to come back, Your Honor.

16 THE COURT: You can come and listen to the
17 festivities tomorrow. Your testimony is done. Thank you
18 very much, Mr. Stone.

19 THE WITNESS: Okay. For sure.

20 THE COURT: Both sides have rested. No rebuttal
21 case. We'll hear closing arguments starting at nine o'clock
22 tomorrow morning.

23 MR. ROCHE: And I believe Your Honor previously
24 said no time limit on closings? What about --

25 THE COURT: I did not set (indiscernible). The

1 only thing I would say is, frequently the less said the
2 better. Okay.

3 MR. ROCHE: Understood.

4 THE COURT: I'm not imposing time limits on you.
5 Okay?

6 MR. ROCHE: Thank you.

7 THE COURT: I will see you all -- I'll see you on
8 the screen. You'll see each other tomorrow morning at nine
9 o'clock. Karen, thank you very much.

10 MR. HURLEY: Thank you, Your Honor.

11 MR. ROCHE: Thank you, Your Honor.

12 MR. HURLEY: Thank you.

13 THE COURT: We are adjourned for the day.

14 (Whereupon these proceedings were concluded at
15 6:06 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: January 17, 2023

[& - 11th]

Page 1

&	1	1,401,662.90	248:17 269:5
& 3:7 4:3 7:16 8:4 186:8	1 5:21 11:19 16:18 24:20,23 32:21 55:20 56:3,3,5 62:22 65:1,9,14 71:15,21,24 72:15,20,22 73:11,16 74:25 75:17 79:19 81:19 117:4 131:14 134:13 137:18 145:25 146:7,9,12,15 146:17,21 152:12,23 160:10,15 179:5 182:3,4 182:14 184:1 184:14 185:7 185:22 193:16 193:17 197:9 198:19,19 203:16,20 204:2,6,8 205:8 207:19 208:2,5,12,14 209:22 232:24 233:2,4 234:6 234:9,18 236:5 236:10 243:6 260:12,15 261:5 278:25 302:21	270:4 1-2 67:10 1.2 98:15 99:3 1.30. 302:21 1.4 11:17,18,20 24:22 25:17,20 51:25 52:12 53:18,24 54:7 54:9 204:4,6,9 204:10,18 205:8 270:9 271:9,13,19 272:4 273:16 274:1 275:8 276:2 277:1,16 285:6 304:17 311:8,19,21 1.5 23:13 1.6 257:20 267:14 268:10 1.8 256:20 1/11/22 3:7 1/12/22 3:7 10 26:24 83:11 98:14 99:2,10 99:11 139:21 140:1 153:15 154:2,19,21 155:11,18,20 155:22 159:6 172:23,23 173:6,6,7 175:9 177:1 196:13,14 214:17 218:11 225:13,14	100 76:13 89:22 112:7,8 112:13 131:5 131:11 138:6 153:19 154:6,9 158:9,10 169:16 274:13 274:16,18,25 100,000 309:25 10004 1:20 10016 4:17 10036 4:7 1006 307:24 308:20 102,980.64 195:1,6 106 5:5 225:23 225:24 107 49:4 10:58 83:13 10th 91:1,14 198:9 11 1:22 20:17 27:8,18,21 28:10 55:22 141:25 184:25 185:20 192:18 194:9 200:11 211:21 242:22 243:1,14 269:3 114,000 243:9 11501 316:23 11:13 83:14,17 11:21 123:19 11th 78:25 80:4,15 81:3
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0016 293:7 0020112 175:17 01/11/2023 3:12 01/12/2023 3:12 0107 135:20 0fxc2 275:3 0x50 240:16,23 258:1 268:22 268:25 0x50dd 274:13 274:22,25 275:3 0x9346 257:12 257:19 0xb1 236:13 268:22 269:14 270:3 271:9 272:4 273:17 278:10 282:5 283:13 292:12 296:13 301:2,7 304:17 305:3 311:21,25 312:11,19,21 0xd2 296:8 0xfc 240:19,22 0xfc2 274:16 274:19	1,401,662.9 269:15		

[11th - 2020]

Page 2

81:25 151:22 184:17 195:19 12 55:23 114:19 198:15 198:17 210:21 211:3,4,4,12 228:21 250:20 120 302:22 12151 316:7 124 5:8 141:24 126 142:15 129,000 57:5 12th 274:24 13 53:7,17 55:24 135 144:11,14 144:22 135,000 248:17 1353 3:11 1358 3:11 136 144:22 1361 3:12 13th 54:8 88:24 245:19 246:2,5 261:21 261:23 262:6 262:14 14 55:25 237:21 266:13 266:17 293:17 140 22:25 144 258:6,18 259:2 145 172:25 173:8 218:5 15 7:18 24:10 83:13 155:9	173:6,7 182:25 200:5 218:11 218:15,22 219:21,24 220:9,12,19 221:14 288:2 150 139:22 158 5:8 15th 22:15 44:19 195:11 16 56:1 158:6 182:25 205:13 16th 89:7 293:1 17 138:11 182:25 193:22 195:2 266:2 316:25 17.1 57:4 172 156:17,20 1746 32:23 175 5:8 177 244:9 178 5:22 179 5:23 243:6 17th 86:7,12 264:18 265:22 265:24,25 18 56:2 59:17 59:24 68:6 69:4 158:6 262:6 185 5:8 18th 68:16 119:13 19 171:5 210:11	190,000 196:3 1:20 124:2 1:40:17 135:20 1:43 53:17 2 2 17:24 21:3 47:6 50:1 194:11,13 228:17,20 229:20 230:17 231:21 232:2 240:25 242:15 242:18 252:21 253:6 269:7,10 269:19,21,23 269:23 270:3 291:21 2,831 245:6 2,973.67 245:1 20 3:5 47:13,15 47:20 50:5 104:22 155:9 173:6 175:12 210:13 218:15 218:22 219:21 219:24 220:9 220:12,19 221:14 228:21 232:17 233:21 246:18,18,21 247:3,4,11 250:14,17 251:23 252:7 252:11 254:13 254:22 264:16 265:11 266:21 268:9 269:10	269:10 274:22 282:11 20,000 283:1 200 6:16 131:8 200,000 249:23 201.94. 46:8 2011 214:12 2016 176:16 2017 32:8 2018 64:23 2020 19:2,17 19:20,25,25 22:16 37:8 38:4 43:25 45:14,17 46:10 47:10,13,17,21 48:7 49:4 50:1 51:11 57:2 96:23 97:2,22 98:22 119:13 121:11,19 122:12 125:23 127:3 128:17 128:21 132:17 138:13 141:4,7 146:18 153:3,6 153:14,16,20 159:25 160:13 168:16 169:10 189:10 190:1 193:8,22 195:2 195:3,17,19 197:18 209:13 209:16 210:25 211:15,17 212:1,5,18 213:23 223:13
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[2020 - 3]

Page 3

223:16 237:2 245:19 260:10 261:18 264:18 278:22 279:15 279:18,21 284:7,17 297:2 298:21 302:16 311:25 2021 10:21,22 11:14 18:11 19:5,9 20:17 23:5,11,16 24:21 51:24 52:11 53:7,17 53:23 59:17,24 65:11,14 68:6 69:4 70:8,23 71:15 77:3,5,9 78:10 82:5 84:15 86:7,12 86:14 87:5 89:20 97:22 105:8 109:1,13 109:15 110:18 121:11 133:7 133:11 135:20 139:18 146:18 149:10 154:1,3 154:7,12 155:17,25 157:7 159:25 160:7,13 166:3 168:17 169:10 173:5 179:4 181:3 185:14 185:16 189:10 191:6,9 192:19	194:9 198:15 198:17 200:19 201:1,14 202:2 202:10 204:3 204:17 205:7 209:15,16,18 210:14 211:21 214:11 218:1 239:17 246:5 248:21 250:24 261:21 264:18 265:22,24 267:9,10 269:14 270:11 271:8 274:12 274:24 275:4 276:5 277:17 277:20 278:1,9 278:11,25 279:2,13 281:5 281:16 284:24 294:16 298:22 301:4 304:12 313:6 2022 32:9 33:5 78:25 80:4 81:25 88:19,24 91:1,14 125:2 137:8 138:5 157:7 205:13 210:11 228:21 232:17 245:19 246:2 261:23 261:23 262:6 262:10,14 263:15 275:4	2023 1:22 186:20,23 316:25 20th 125:2 137:8 138:5 230:9 232:13 233:13 234:2 235:7,14 21 191:4,9 246:5 270:11 21,987 46:7 214 311:15 217 312:14 218 272:15,21 21st 239:17 271:8 22 172:11 246:4 262:14 22-01139 1:4 3:1 22-10964 1:3 22nd 213:1,5 230:7 23 43:22,24 45:14 46:7 56:3 70:7,15 70:23 71:15 116:5 134:13 307:2 311:16 23rd 74:8 87:5 179:4 274:12 24 56:3,6,12 92:4 115:11 134:16 138:10 144:22 174:1 306:23 307:14 308:6	24th 248:21 25 3:5 156:18 156:25 296:8 25th 274:18 26 49:3 138:8 201:14 202:2,9 205:7 210:14 292:10 260 4:16 5:17 269 267:7 26th 203:12 204:16 270:17 270:18 271:4 27 3:5 78:9 263:17 271 256:13 27th 77:3,5,9 139:18 28 21:18 32:22 65:14 185:16 287 5:8 28th 105:8 109:14 192:3,5 197:22 210:21 29 3:5 21:18,20 22:1 26:21 27:8,19 28:11 2:55 139:18 2nd 250:24 2x 159:18 3 3 20:23 33:25 35:9,12 60:2 79:21 134:2,10 135:9 144:22 194:18,21 198:20 199:5
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200:3,5 206:7 206:9 230:17 241:12 3,949,803.45. 264:7 3-4-5 67:11 3.5 245:8 266:18 3.8 268:8 3.85 262:4 30 22:10,12 56:13 106:16 106:22 134:16 180:20,24 181:2,8 195:3 265:15 293:18 30,000 281:24 282:14 300 20:1 267:22 316:22 304 264:1 31 5:4,22 22:16 38:4 47:9 56:7 56:14,15 134:16 177:18 178:3,6 197:18 210:25 211:15 211:17 212:1,5 223:24 31,875 195:11 310 5:8 32 3:5 56:8,15 134:17 3236 28:9 33 5:15,21 22:12 55:21 56:5,9,9,15	102:20 134:18 330 316:21 34 3:6 5:4 42:6 97:4,4,11,12 256:24 35 16:4,11 350 239:16 240:2,4 241:1 241:3 350,000 21:2 36 5:23 178:23 179:10,15 242:23 37 181:22 183:21 186:10 196:20 197:2,4 257:18 38 190:8 244:2 39 36:16 193:2 193:5 3rd 82:5 84:15 86:14 233:25 235:11,17 237:23 4 4 33:25 34:8 35:9,12 37:8 81:22 114:5 134:2,10 139:10 199:18 199:18 235:21 238:13,19 245:11 262:21 280:7,16 281:3 283:18 289:21 4,000 52:6	40 5:24 15:13 20:22,23 22:1 22:4 38:7,8 46:13,16 47:5 53:14 101:20 101:23 102:4 120:21 263:21 292:20,21,22 292:23 293:1,7 295:5 40,000 281:24 282:15 41 191:14,18 197:15,17 223:22 289:19 41-11 198:11 41-6 224:2 42 3:6 191:12 191:23,24 43 191:14,18 201:9,11 202:1 236:6,10,13 292:6 295:20 295:21 45 3:6 15:13 286:9 46 23:15 212:22 213:2,4 213:9 47 79:8 48 30:8,9 82:16 82:18 206:9 250:15 49 171:3,5 4:00 225:14 4th 267:10	5 5 33:4 65:10 81:19,22 96:11 121:2 134:2,10 150:21 175:9 185:14 192:3,6 192:11,22 197:22 205:22 226:1 247:2,2 247:14,16 265:9 272:21 281:5 5.25 252:7 264:23 268:8 5.8 266:22 5.87 252:4 50 80:8 120:16 120:16,19 131:3 172:11 215:15 50,000 171:24 283:2 291:20 292:5 500 52:4 500,000 242:15 242:18 50:50 120:22 51 3:6 53 3:6 5:14,24 28:15 94:24 95:17,19 113:2 114:5,19 54 28:18 47:17 47:21 540,000 267:25 55 29:3 137:14 243:6
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[56/134 - able]

Page 5

56/134 5:21 57 3:6 58 3:6 29:6,10 29:18,22 172:22,23 59 5:15 29:7,22 32:18,19 33:14 5:18 286:22 5:25 286:22 5th 89:20 267:9 281:15	625,000 242:1 63 98:9,11,25 237:21 63,750 195:14 64 98:16,25 229:23 232:17 235:17,21 247:2 65 231:4,20 232:12,19,21 235:13 266:25 65,000 20:25 68 245:15 246:11,13 69 234:4,25 235:10,13,18 269:6 6:06 315:15 6d 22:12	710 185:15 72 258:1 721 184:14 73 251:23 252:10 253:18 254:12 264:7 730-1 81:16,19 81:20,22 733 184:20 185:8,14 75 115:8 119:6 174:1 252:1 76 57:6 116:4	9 9 3:7,7 19:5,9 26:21,23 49:8 55:21 57:2 141:25 191:9 215:17 218:1 90 104:19 268:14 305:7 306:16 94 5:5 95 5:5,14,16 975 257:23 99 158:1,2 99,897 250:21 9:00 1:23 3:12 3:13 9th 23:9 172:24 173:5 191:24 245:18 245:21 260:10 261:18 263:15 264:18 266:1 266:10,12 267:19
6	65,000 20:25 68 245:15 246:11,13 69 234:4,25 235:10,13,18 269:6 6:06 315:15 6d 22:12	8 8 142:17 186:20,23 249:22 283:9 283:11,16 311:15 80 104:18 123:1 268:14 282:7,18 289:2 800 18:2 23:13 81 47:21 81.5 48:7 85 154:23 155:2 303:14 305:7 306:16 850 241:22 242:1 87 282:10 88 267:18 8:57 37:8 8th 4:16 181:3	a ability 107:20 107:22 121:12 121:16,18 125:5 289:8 able 87:13 91:22 113:13 113:14,17 122:25 130:21 144:24 155:23 164:4 180:5 224:19 227:12
6 79:19,21 100:9,18 105:11,13 116:25 117:7 119:12 142:17 184:8 189:2,3 189:4,8 213:10 249:22 255:1 291:13 60 5:16 29:23 94:24 95:17,19 100:19 105:13 117:3,4 120:19 120:19 231:20 600 53:19 600,000 249:25 250:5 276:7,10 277:25 278:23 600,000-700... 12:2 61 205:16,21 228:16,17 252:6 62 237:21	7 7 23:16 193:8 195:17,19 7.3 19:16 7.4 293:14,15 7.8b 22:5 7.8b. 22:9 70 5:17 261:6,7 70,000 249:11 700 186:22 700,000 276:7 276:11 277:7 277:11 280:22 285:5 7065 3:4,10 71 245:14 263:20		

233:7 234:23	146:17,18,21	157:2 281:4,7	121:24 122:1,2
241:6 260:16	152:23 160:19	289:2 316:4	122:6,7,13,21
281:6 283:12	182:20 184:14	achieved 289:3	126:9 132:17
297:5 303:21	185:9 207:5	achieving	132:20,23
305:13,15	210:6 278:18	211:11	133:1,8,12
above 159:7	278:18 285:13	acknowledge	134:24 135:1
288:25 297:20	301:2 303:12	171:25 254:21	143:19 144:2,5
absence 26:2	accountant	acknowledged	165:24 167:14
absolutely	295:7	213:15	168:8 174:4,16
82:22 107:15	accounted 18:6	acquired 20:19	189:14 242:11
115:18 116:15	accounting	185:6,7 229:7	242:13,14
116:17 171:1	9:16 18:3,7,9	250:5	292:2 296:23
174:7 261:4	24:3 97:19,20	act 20:20 32:6	297:3 299:10
314:14	150:5,9 151:16	action 19:13	300:8
accept 106:7,7	164:3,9,12	34:23	activity 62:22
accepting 86:9	226:7,8 288:20	active 70:5	152:12 242:18
access 8:7,7	294:20 295:1	163:6	304:6
9:20 11:15	296:17,22	actively 16:22	actor 302:16
57:15 91:4,4	297:8 298:9	activities 17:1	actual 198:10
161:5 165:19	307:21	20:7 22:22	actually 8:1
182:15,19	accounts	34:3 58:5	9:22 17:16
183:14 189:16	144:16 207:15	96:23,25	43:13 44:4,5
204:8,17 205:8	208:8 263:6	100:11,24	44:23 47:7
206:24 207:4	278:19 294:24	101:2 103:2,19	51:20 62:15
210:18 219:3	296:23 305:16	103:22 104:16	63:10 72:5
223:15 262:9	305:17 310:5	104:17 107:13	77:4 86:18
271:3,8,9	accrual 98:14	107:17,18,21	87:1 113:7
285:2 299:23	99:2,11,11	107:23 108:9	117:14 136:20
accessing	accrued 98:7	108:12,16	187:8 189:25
14:13	293:19	109:5,6,23	196:13 197:2
account 9:2	accumulated	110:9,20,21,23	198:10 200:3
16:22 23:7	306:8	111:7,18	208:15 212:14
70:5,7 71:15	accuracy 99:5	115:15 116:2,8	223:11 225:23
71:18,19,21,22	281:4	116:13 117:11	232:25 237:12
71:24 72:10,15	accurate 33:5	117:17,19,22	240:13 244:5
74:25 76:11	41:1 106:25	118:6,16 119:4	244:16 247:19
146:7,9,12,15	142:5,6 144:18	119:8,10 120:6	265:15 268:21

[actually - agree]

Page 7

272:25 278:25 296:25 add 165:20 260:4 264:12 added 44:17 238:5 adding 261:10 addition 195:9 additional 16:11 22:25 178:18 179:25 185:15 299:19 address 18:4 62:22 63:2 64:9,25 65:1 131:14,17 162:14 201:16 201:22 207:19 207:20,21,23 207:25 208:2 223:5 236:18 236:19 262:12 262:13 263:6 296:8,13 311:25 312:12 312:23 addressed 172:4 215:20 addressee 247:21 addresses 208:5 235:23 236:5,9,9,13 236:13,14 238:10,12,17 238:17 247:4 265:11	addressing 18:21 25:24 108:9 119:10 adjourned 315:13 admission 10:22 44:6 68:10 admit 8:20 14:23 179:9 181:7 182:7 278:10 307:1 admitted 9:25 10:21 33:12,14 35:1 37:4 38:6 38:9 46:13 47:4 53:13,14 56:4,5,10,16 57:1 58:12,20 59:3 65:22 66:6 95:17,19 97:5 134:2,13 134:17,18 150:20 178:4,6 179:14,15,23 182:24 183:20 187:18,20,22 261:7 288:2 admittedly 14:19 admitting 30:16,17 admonished 71:18 adv 1:4 advance 28:22 69:9 82:21	114:13,21 170:9,13 172:19 173:19 212:8,17 213:17 219:2 222:1,18,23 227:17 230:24 272:2,10 273:4 advanced 173:18 advances 114:9 115:3 213:12,22 217:19 adversary 3:1 19:13 advised 6:8 237:24 266:7 advising 191:25 227:23 advocated 141:14 affect 314:3 affected 304:4 304:9 312:1 affidavit 5:22 56:14 95:13 96:7,10 100:9 100:22 101:11 102:22,24 104:22 105:7 105:17 177:10 177:21,25 179:20,23 187:8 189:2,4 189:5,6 191:5 211:2,3,7,9	212:1 229:24 230:5,19 232:14,18 233:12 234:2 235:14,18 238:13,19 247:1,14 255:2 255:7,8 262:17 262:21 265:7,9 265:18 283:9 283:11 299:4 309:12 affidavits 96:4 96:8 104:22 affiliate 199:13 affiliated 177:3 affirm 31:7 94:6 124:15 175:24 affirmative 10:1 aficionado 75:8 aftermath 89:9 afternoon 124:9,24,25 176:4,5,7 186:7,9 187:7 ago 17:11 48:16 54:17,18 184:20 185:8 185:14,15 186:22 265:15 agree 19:23 51:13 82:3 134:5 183:5 300:4
---	---	---	--

agreed 7:18	197:18,21	138:1 150:23	168:12 170:16
20:20 27:23	198:16 200:11	155:4,7,14	171:11,21,21
30:24 42:8	200:15 220:9	156:23 157:16	171:23 172:5
103:9,15	221:14 223:23	158:24 171:17	174:12 177:5
196:17 200:16	227:24 252:20	171:18 178:21	212:10 215:21
210:23 211:13	252:25 253:1,5	180:5 185:2	218:21 220:19
229:25	253:23 254:16	187:2 188:6	288:8 296:1
agreeing	254:23,24	191:21 219:8,8	302:9 303:5
157:23 188:9	289:16,17,17	230:15 231:19	algorithmica...
296:16	291:13 293:10	232:1 259:16	207:7,9
agreement	293:11,18	261:14 264:13	allege 71:25
13:16 17:23	294:1,9 300:9	276:22,23	alleged 13:3
19:4,19,21	agreement's	277:23 280:14	110:6 168:20
20:18,19,20	195:4	283:22 287:1	173:19 214:19
22:2,6,17,20	agreements	287:17 288:3	216:11 227:23
22:24 23:3	19:21 37:24,25	291:4 295:15	allegedly 169:2
24:7 27:4,13	192:4	299:6,6 311:2	alleges 88:14
29:6,11 37:16	agrees 194:13	311:4	allocated
37:21,23 38:3	ahead 15:19	airdrop 11:17	136:18
38:15 39:16	16:13 22:13	24:19 304:1,2	allocation 50:4
40:16,20 41:7	29:12 31:12	312:10,18	126:12
41:11 46:10,16	32:15 39:1	airdropped	allocations
47:6,8,9,13	47:2 49:13	24:22 75:23	128:11
68:14 86:21	52:23 53:1	akin 4:3 7:16	allow 116:21
99:16,25 101:3	55:6 56:17	8:4 93:12	163:2
101:13,16	59:1,11,22	107:6 113:3	allowed 14:22
102:5,9,12,17	70:19 74:4,19	114:6 158:17	51:14 228:4
102:25 103:4,5	74:21 76:24	186:7	252:21 260:2
103:7,9,9,12	77:23 79:16	al 1:12,15 3:2,2	allows 207:4
103:14 111:20	85:16 92:2	6:4,16	207:14
127:16,18,20	93:9 94:4,17	alarming	aloud 33:25
127:22 148:3	95:21 96:16	135:24	170:22
179:22 183:3	102:2 112:23	alex 5:4 10:5,8	alright 84:10
192:9,13,16,18	113:6 114:3	30:20 31:13	ama 88:24 91:1
192:21,23	115:10 121:8	32:21 34:18	91:2
193:1,1,6,6,21	121:15 122:19	114:20,25	ambiguous
194:1,7 196:16	124:21 125:21	115:22 116:10	220:25

[amended - approval]

Page 9

<p>amended 15:20 26:17 28:8 95:13 america 4:6 amount 13:12 39:15 44:3 45:16,21,23 46:5 51:11 57:19 103:24 110:6 122:24 153:13 154:18 154:18 155:17 159:17 171:25 173:2 196:2,5 215:5 217:25 218:12 220:22 222:2,5 236:24 238:25 249:5,8 251:1 256:12 258:17 259:1 278:23 282:15 292:3 300:15 300:16,22 amounts 8:25 9:1 115:1 162:25 173:23 173:23 217:19 244:23 253:16 258:20,22 285:19,20 292:4 animated 9:18 anonymity 12:11 anonymous 71:1,7</p>	<p>answer 41:22 48:24 58:17 63:6,7 64:19 76:15 81:2 85:4 87:12,13 87:17 90:13 91:21,23,25 92:1 105:24 112:10 114:9 114:23 115:15 115:17,18,21 116:9 122:19 138:13,15,17 141:21,23 142:3,18,19 144:8,16,17 153:24 155:12 157:2,2 158:7 158:11 171:11 171:13,20 172:5,14 173:1 173:2,6,8,12 174:4,7,7,19 186:12 195:23 205:2 207:18 213:12,20,22 214:2 215:21 220:1,25 221:5 226:3,12,14 246:15 254:6 272:7 275:17 312:22,24 answered 35:14 39:3 62:3 69:2 88:1 90:7</p>	<p>answering 254:8 answers 112:20 170:20 214:5 313:2 anticipate 276:20 anybody 106:24 125:9 172:3 177:3 215:19 306:15 anymore 276:11 anyway 232:17 265:19 268:25 apa 19:6,12 21:11 111:23 192:9,14 197:8 211:18,20 apart 17:15 170:8 api 197:8 apologies 22:11 46:19 121:15 122:17 155:6 164:5,25 196:25 200:6 apologize 21:17 55:2 93:25 100:17 151:11 221:10 290:14 apparently 17:6 49:11 appear 79:11 232:4,6</p>	<p>appearances 6:22 appeared 232:7 appearing 33:19 appears 8:20 44:14 49:18 application 11:22 111:9 162:9 283:14 284:13 appoint 76:22 appreciated 112:15 appreciation 112:13 approach 32:13 36:17 47:1 49:8 52:21 55:7 59:10 70:12 72:25 74:20 75:12 76:23 79:8 94:16 101:25 137:7 150:13 177:13 180:19 186:25 188:3 191:20 280:13 approaches 37:16 appropriate 296:5 approval 41:6 130:19,20 253:7 291:19</p>
---	--	---	--

292:4 approved 69:21 131:1 approximately 185:10 236:21 262:4 277:7 285:5 april 23:16 92:4 281:5,14 aram 128:21 153:12 argue 48:23 argued 12:23 16:2 29:13 argues 15:22 arguing 16:3 argument 29:20 56:13 310:19 arguments 29:19 313:21 314:21 arose 24:13 arrange 77:16 arrived 255:24 art 145:18 article 72:11 72:13 artificially 302:23 ascending 147:18 ascertain 63:8 aside 18:9 68:5 138:25 180:18 asked 15:5,18 35:13 43:10	52:9 56:23 62:2 66:21 69:2 71:6,10 76:9 78:23 87:25 98:4 107:7 110:1 111:9,19 138:11,13 155:4 158:21 159:1 160:25 163:23 164:21 168:22 169:1 171:14 178:3 186:11 204:23 275:7 288:16 295:13 301:18 313:1 asking 8:18 39:24 44:7 50:20,21 59:6 87:14 90:11 114:6 137:23 159:20 183:9 186:9 204:20 204:21 206:3 216:21 220:13 254:2 260:19 272:6 279:6 285:4 288:21 289:1 292:3,7 297:24 298:7 312:7 assaf 128:21 153:12 assert 10:1 104:21	asserted 17:19 30:11 56:11 134:19 181:17 308:21 asserts 9:14 asset 17:22 20:18 22:2,5,8 23:3 24:7 38:3 40:16,19 46:9 46:16 47:5,7,9 55:13 68:13 90:14,17,18,20 99:16,24 101:3 101:12,15 102:5,8,11,17 102:25 103:3,5 103:7 111:20 140:24,25 192:8 193:25 194:7 281:11 293:4,10,11,25 294:9 306:2 310:4 assets 9:4,5,6,6 10:24 11:6 12:19,21,23,23 13:5,14,25 14:5,5,11,14 14:18 17:17,24 19:24 20:19 23:7 25:4 34:3 34:9 41:10,17 41:25 42:17 47:22 49:16 50:8 51:3,5,12 51:13,15,19,24 52:10,12 53:8	53:19,23,25 54:6,6,10,11 58:13 60:3 61:6,9,11,14 63:6 68:7,10 69:19 78:2 82:2,2 86:9 89:3 92:4,5,7,9 92:10,11,21 93:1 103:4,24 132:10 140:1 140:11,14,16 142:23 149:14 156:1,15 164:10 165:9 171:9 185:22 189:9,14,16 190:1,5,13,23 200:21 201:6 202:19,20,20 202:21 207:4 212:17 214:16 217:9 221:15 227:16,19 228:23 229:3,3 229:8,14 235:24 247:22 249:18 262:10 262:19 283:13 289:8 305:23 306:12 309:18 309:22 310:4,5 310:8,11 assigned 176:25 assist 226:4
---	---	---	--

associate 43:17	attempted	195:2 298:21	217:9 218:1,11
associated	19:10 24:13	aum 140:6	218:14,21
180:12 206:12	attempts 7:10	289:3 305:9,16	219:2 222:4,4
206:22 207:5	15:21 19:11	authenticate	227:16 230:24
207:15 208:2	attendance	307:8	245:23 252:12
238:25 249:24	33:17	authenticity	252:20,20
250:17 282:5	attended 58:1	43:7,10	253:20,22
283:13	58:4,7 83:25	author 179:7	254:14,16,18
assume 71:16	130:1	authority	254:22,24
72:12	attention 18:16	69:20 310:7,10	263:20 271:14
assumed 54:8	138:10 193:17	310:12	271:15,15
54:16	194:11 196:8	authorization	291:9
assuming	203:5 228:16	28:24 78:7	authorizes
187:23	231:4 259:23	173:9,10 212:9	246:12
assumption	293:1 295:4	212:13,14	authorizing
255:15	311:12 312:14	213:17,20	10:22 171:9
assurances	attorney 88:3,4	214:11 216:11	214:16
115:20 119:17	88:9,10,11,14	216:14 217:2	automated
174:9	attorneys 4:4	219:21 222:1	120:6
assure 116:12	4:15	252:22,24	autonomous
assured 116:7	attributed	authorizations	311:23
119:13,16	96:22,25	10:13 114:8	available 6:11
attach 78:19	audibly 186:13	172:12,13	8:22 12:23
78:23	195:23	214:23 217:5	14:5 104:9,11
attached 78:20	audit 60:2	authorize 34:2	105:2,5 161:6
203:9 230:19	293:21 294:8	34:4,9,10	185:23 242:21
232:13 233:12	294:11,18	68:23 213:11	304:23 306:19
290:1	295:7,12,14	213:21 215:5	307:25 308:8
attack 303:7	audited 297:17	authorized 7:9	308:25 309:4,5
attacked	auditor 293:22	10:3,4 23:2	avenue 4:16
302:17	295:7,11	42:4 69:18	133:17
attacker	august 19:17	76:20 114:13	avenues
302:20	19:18 37:8	114:21 170:12	133:18
attacking	43:25 45:14,17	170:16 172:17	avoid 24:1
302:17	46:6,10 47:12	172:19 173:5	92:10,21 296:9
attempt 16:6	51:10 89:20	212:8,16	aware 30:24
	190:1 193:22	213:13,16	41:15,16,17,25

42:2 43:21 58:5 65:9,13 70:4 71:17,21 71:24 72:5,8 84:2 103:8 104:12 115:25 127:15,18 128:9 146:25 147:7,10,15 152:5,8 156:1 156:13,25 164:16 168:18 168:21 170:11 170:15 177:23 188:11 200:18 200:22 210:10 213:15 222:17 222:20,24 237:23 267:3 273:22 292:15 aws 302:18,20	202:17 221:7 223:22 232:5 243:18 244:16 244:20,22 245:5,16 246:9 248:1 251:13 253:18 268:21 269:6,18 271:7 275:8 284:21 286:11,17 287:15 293:9 295:4 296:17 298:8 304:1 311:8 314:15 backed 223:11 223:14,15 background 54:23 backs 219:1 backup 284:3 bad 139:3,6 badly 314:11 bailey 241:16 241:24 242:6 242:10 balance 14:14 18:10 57:5 103:24 148:21 149:7 163:6 305:19,20 306:12 balances 107:24 108:1 111:14,17,18 164:4 balancing 14:9	bank 4:6 89:22 92:10,22 163:6 278:19 285:13 bankruptcy 1:1,18 2:3 3:5 3:11 13:18,19 13:20 banned 11:23 273:22 274:8 301:10 bans 109:6 121:1 122:4 165:7,11,18 bargain 18:5 23:25 base's 302:18 based 18:3,6,9 27:4,13 28:7 64:5 99:10,12 99:13 112:4 131:24 136:9 166:18 211:11 226:4 235:24 262:18 263:15 268:7 273:22 302:2 basically 109:7 122:4 176:25 304:5 basis 18:1 27:15 28:22 29:16 95:14 110:16 150:9 150:10 166:4 168:6 299:11 308:20	bates 45:8 293:2,5 battlestar 35:21,22 176:21,22,24 176:25 177:2,4 177:6 bear 55:19 91:10 93:24 158:19 178:17 bearing 73:15 bearings 289:18 beating 92:16 bedroom 243:11 began 19:3 125:23 189:25 190:23 309:22 beginning 21:8 62:10 174:1 190:4 226:18 236:22 255:20 257:12 290:23 begins 139:20 178:11 behalf 7:16 8:5 19:4 174:21 193:13 254:25 291:9 belief 110:16 133:24 166:5,6 168:11 262:20 believe 12:7 13:23 21:17 22:19 27:21,21 29:16 30:1
b			
b 2:1 5:10 120:17,20 199:21 241:2,3 247:10 293:14 293:16 back 23:13 41:5 46:12 57:9 71:5 82:7 83:12,19 84:16 87:22 91:6 94:1 98:25 109:24 112:6,8 149:15 165:20 168:1 191:16 193:16 198:19			

31:4 38:6 42:7	165:1 166:1,22	254:15 256:6	296:24
51:15 61:1	167:11 168:9	258:2,16,21	benjamin
70:11 101:19	168:16 169:10	259:6,17 261:5	176:11
110:9,14 114:8	172:5,14 173:8	262:15 265:15	best 13:13 89:2
114:10,11	173:12 174:6	265:21 266:9	129:10 164:14
115:17,22	174:11 175:21	266:10,15	213:20 284:9
116:11,16	178:1 182:2	267:8,17 269:1	289:7 314:10
126:25 128:14	183:25 186:19	272:22 275:11	better 315:2
128:21 129:13	186:24 187:19	275:21 276:4	beyond 36:13
129:16,17,19	190:3,9,11	277:9,19 278:2	78:17 271:4
129:23 130:6	192:15,17,20	278:25 280:2	298:24 313:10
131:2,3,4,6,19	194:4 195:18	280:18,21	biases 73:15
132:11,14,16	195:21 196:4	281:19 285:15	big 54:25
132:25 133:3	198:4,18 199:1	289:18 291:11	246:14
133:10,17	199:4,9,17	292:20 295:18	billed 195:1,11
134:3 135:6,14	201:4 202:11	295:19 297:23	195:22 196:2
135:21 137:3	208:25 211:16	304:5,18	billion 17:24
137:13 140:2	211:24 213:22	306:22,25	23:13 51:25
141:8 142:3,4	214:18,22	307:23 308:7	52:12 53:18,24
142:6,8,11,18	215:1,9,21	309:14 314:23	54:7,9 80:8
142:20,22	216:16,17,25	believed 51:20	92:4,5 154:11
143:2,11,14	218:6,13	51:21 136:6	154:15,20
144:3,16,17,19	219:10 220:11	146:23 152:2	155:11,18,20
145:3,6,12	220:15 222:3,6	166:2 168:7	155:24
146:3,6,11,19	224:9 226:13	222:22 291:8	billions 89:1
146:21 147:6,9	227:5 228:7	297:23 304:7	91:3 92:6
147:12 148:13	230:8 232:20	believing 13:13	bills 249:2
148:17 149:11	234:3 235:9,16	22:22	binder 187:5,6
149:24 150:6	235:20 237:6	belong 25:22	187:8 191:12
151:3,7,9,23	237:16 238:1	belonged 17:18	191:16,17
151:25 152:4,4	238:15,23	24:24 52:12	193:3 196:21
153:17 154:4,8	241:11 242:8	68:8	280:11 289:19
154:21 155:22	242:14 243:16	belonging 8:14	292:21
156:4 157:2	243:24 245:13	benefit 13:14	binders 187:24
159:25 160:7	249:1,4,10	237:12,16	bit 21:3 35:11
160:22 161:3	250:16,25	238:22 243:20	43:14 121:13
163:18 164:20	251:1,20 252:9	262:3 264:22	158:18 159:13

[bit - called]

Page 14

160:19 203:17 260:3 301:25 bitcoin 120:8 131:22,24 132:2,5 141:15 142:3,3,13,18 142:23 236:25 237:5 300:10 300:10,15,18 blatant 298:7 blindfoldedly 298:8 block 12:11,16 12:18 17:5 62:21,24 63:5 63:9 72:11 205:25 blockchain 145:17 206:22 226:5 229:6 246:19 274:2,5 blocking 45:18 241:19 blue 73:11,15 board 10:25 11:8,9 41:6 88:20 89:8 202:14,23 203:2,9,13 book 57:11 60:3 106:2 238:8 289:1 booking 105:20 288:15 books 156:15 borrowed 53:19 242:10	borrowing 139:21 boss 302:8 bottom 21:21 26:6 36:23 37:7,8 71:3 74:8 135:18 144:14 151:12 198:12 202:6 224:2 281:23 293:13 bought 72:19 76:11 227:19 227:24 228:9 250:8 255:22 256:4 277:13 bowling 1:19 box 124:13 260:12,13 breach 19:12 23:24 breaches 23:21 break 92:15 113:7 123:19 166:9 175:10 225:20 brief 33:22 121:7 180:4 182:8 311:3,4 briefly 7:25 9:10,13 12:9 24:12 25:23 29:12 301:9 304:22 311:1 bring 23:24 30:22 97:4 280:11	broadcast 16:23 broadcasted 152:11 160:23 broke 52:24 broken 19:1 309:19 brought 13:8 19:12 browser 69:23 308:17 bryant 4:5 budget 224:11 291:17 bullet 224:10 291:15 bunch 77:2 251:7 274:10 276:17 burden 26:7 bureau 86:8 87:2 business 195:3 307:23 button 63:21 buy 142:10 143:3,9 227:16 228:4 268:19 buyer 293:18 294:3 buyer's 293:21 buying 300:14 buys 233:23 240:13 252:15 253:12 255:1 256:3 267:6 268:13,15	c c 4:1 6:1 21:6 238:8,9 241:2 241:3 247:13 316:1,1 calculate 17:25 18:2 calculated 112:3 calculation 110:2 151:15 230:24 308:22 calculations 101:10 108:13 112:1 calendar 119:9 291:20 292:3 293:17,19 call 6:25 7:12 26:16 30:18 93:9,10 136:3 175:8 176:24 207:25 209:11 209:21 216:17 216:21,23 217:7,13 269:5 287:9 300:15 313:18 called 15:23 20:5 23:18 24:19 26:25 35:21,22 64:3 64:12,13,14 70:5 103:21 110:25 111:10 122:18 144:2 145:7,25 162:9
--	---	---	---

[called - celsius]

Page 15

163:24 188:20 192:25 193:1 197:4 198:20 207:23 209:7 230:4 273:20 283:14 299:20 303:5 calling 7:5 158:22 233:17 calls 11:25,25 30:20 108:8 133:19 147:20 147:24 148:2,6 148:10,13,16 169:25 170:4,8 camera 9:11 55:4 cameras 7:8 campaign 24:2 cap 177:1 229:10 capabilities 132:4 capable 16:4 143:21 capacity 203:8 203:23 capital 35:22 36:5 88:20 89:8,17 176:21 176:22 caps 224:5 care 256:10 carefully 102:15 221:4 carry 108:15	case 1:3,4 8:6 8:22,23 12:8 12:20 14:10,10 14:12 18:22,25 24:8 26:9 31:3 32:11 44:21 65:16 81:10 125:2 127:2 153:17,25 154:4,8 166:1 166:2 188:11 200:1,19 202:22 218:6 222:17 225:20 236:17 237:16 264:4 287:7 314:21 cases 12:15 13:2 237:11 238:23 cash 11:22 15:24 30:10 54:19 273:20 273:22,25 274:4,8,12,15 274:19,21,25 275:3,6,9,10 275:20,21 284:24,25 285:15 301:9 303:11 casualties 89:14 categorize 263:23 category 29:4 253:9 256:1	cause 140:23 caused 41:10 41:12 224:18 266:2 267:18 268:2 causes 282:17 cc 49:19 cc'd 36:25 172:6 215:23 cease 86:8,18 87:2,8,18 202:18 ceased 190:23 cel 143:4,10,12 143:15 celebrate 16:23 cell 21:2 240:25 242:22 243:1,14 cells 249:22 celsius 1:8,12 3:1 4:4 6:3,15 6:18,24 7:3 8:7 8:8,9,14,16,17 8:25 9:14,15 9:20,21 10:23 11:6,9,19 12:8 13:8,11 14:17 14:19 15:21,25 16:2,3,5,19,20 16:24,25 17:3 17:4,11,13,16 17:18,20,23 18:4,8,9,10,12 19:4,13,15,17 19:23,25 20:4 20:6,8,12,19	20:21,25 21:1 22:19,25 23:1 23:6,9,13,14 23:16,20,20,23 24:18,20,25 25:4,9,10,10 25:21,22,22,25 25:25 26:7,8 26:13 29:14 30:20 31:24 32:1,7,10 34:3 34:8,9,12 35:4 35:18 36:2,5,5 36:9 37:25 39:13,19,23,24 39:24 40:3,7 40:16,20,23,25 41:5,8,10,12 41:13,20,25 42:7,18,20,22 43:4,25 44:10 44:21,25 45:2 45:7,7,8,15,16 47:17,21 48:7 49:4,19 51:8,9 51:11,14,23 52:2,10,13,17 53:5,23 54:1,2 54:10 55:12 58:13 59:4,16 60:15 61:5,10 61:14,19 62:7 62:16,16 68:8 69:5,21 70:2 75:25 76:10,11 76:12,19,20 77:3 79:2 80:5
---	--	---	--

[celsius - celsius]

Page 16

80:12,15,21	139:4 140:1,11	198:24,25	253:13,14
81:3,10 82:1,7	140:15 141:2,6	199:7,13,13,13	254:20,25
84:16 86:8	141:15 142:2,7	199:16,16,20	255:3,11,14,19
87:8,10,18,22	142:9,12,17,22	199:23,23,24	255:23 256:4
88:20,25 89:2	142:25 143:3,9	200:19,20	256:15 257:3
89:12,14,21	143:18,21	201:5,20 202:7	262:2,9,10,19
90:20,25 91:3	144:1,4,15,24	202:9,15,19,22	262:23 263:4,4
91:16,22 92:4	144:25 145:22	204:16,17	263:6,9,10,16
92:8,10,11,21	146:5,22 147:5	206:12 209:7	263:18,22
92:25 93:1	147:8,11 148:4	210:11,13,16	264:9,22 265:2
94:14,25 95:9	148:7,20 149:6	210:19,22	265:12 266:3,5
95:11 96:4,22	149:14,18,20	211:4,13 212:2	266:9,13,24
97:2,15,16,21	150:2,5 151:5	212:2,8,12,17	267:1,3,5,18
98:24 99:16	151:10 153:2,8	213:14,25	267:19 268:3,4
103:4 104:3	153:22 156:1	217:19 218:16	268:4,5,16,17
106:16 109:22	156:14 159:2	218:22 219:22	269:13 270:3
109:25 110:17	159:21 160:9	220:10 221:14	270:13,16,18
110:20 115:13	160:24 161:1,5	222:22 223:4	271:16,17
115:14,15,19	161:24 163:16	224:4,8,11,15	272:2 273:1,5
116:1,2,8,8,9	164:3,9,17	224:17,18,20	275:9 278:10
116:12,13,14	165:2,10 173:5	225:1 226:8,15	278:22 283:11
119:13,15,16	174:3,3,4,9,15	227:3,6,6,16	284:1,2 288:9
121:12 122:2	174:16,21,22	227:19,23	288:10,20
122:11 125:12	177:3,7,8	229:5 230:23	289:8,9,25
125:14,15,18	181:4 182:6,12	235:24 236:3,4	290:3,3,12,13
125:23,25	182:15 183:6	236:8,11 238:1	290:13,17,17
126:6,9,13,18	183:13 186:8	238:12 239:6	290:18,20,21
126:21 127:8	188:12,14,15	239:13,17	290:21,25,25
127:15,19,19	188:15,17,18	241:23 244:1	291:6,7,10
127:23,23	189:9,9,13,14	245:5,16	292:2,17 294:4
128:8,14,17	189:16 190:1,5	246:12,14	294:17,20,21
129:5,6,25	190:7,12,22,23	247:5,13,18,20	295:2,11
130:13,19,21	191:1,5,6,25	247:22,25	296:13,17,21
131:17 132:4	192:1 193:5	248:20 249:16	296:24,25
133:5,22	194:14,25	249:18,19	297:2,5,7,10
135:16 137:1	195:6,10 196:5	250:23 251:6	297:19,19
138:12,21	196:11 198:6	252:12,18,22	298:6 299:10

299:12,16,25 300:9,20 303:1 303:20,22 304:14,18,21 305:2,9,13 306:21 311:9 312:1,11,13,13 313:4 celsius's 164:22 celsius.netw... 201:13 223:6 central 9:18 centralized 163:13 278:18 299:23 303:10 303:16 ceo 18:8,19 20:20 23:9 32:1,6 41:13 43:9 181:4 190:17 191:1,6 191:25 198:6 224:15,17 291:6 294:5 299:16 certain 9:6 27:14,22,22 95:12 101:8,10 102:19 109:8 111:22 112:4,5 112:7 114:10 122:3,24 147:21 166:15 170:1 173:18 192:4 198:24 210:17 227:24	288:23 294:23 304:1,1 certainly 13:6 35:7 201:5 221:12 225:12 251:13 certified 316:3 cetera 145:18 164:11 283:2 305:24 cfo 49:19 55:12 126:6 127:23 129:12 130:19 133:5 135:16 146:10 151:5,7 151:10 211:4 chain 5:24 12:12,16,18 17:6 36:24 53:4 55:11 59:15 62:21,24 63:5,9 273:19 288:4,8 chambers 137:13 259:18 chance 254:5 change 51:1,2 51:4 120:13 173:7 264:10 changed 160:1 302:23 303:8 changeover 284:6 changing 302:20 chapman 4:10 30:8 93:10,11	93:13,14,17,21 94:1,12,16,18 94:22 95:9,22 95:23 96:13 105:21 107:5,6 110:13 112:24 112:25 114:4 116:18 119:20 119:23,25 121:20 123:12 123:14,17,22 141:16 143:6 144:20 148:22 149:1 156:7 158:16,17,25 168:5 169:22 169:24 171:1,3 171:5,7,15,19 174:24 characterizat... 213:13 characterizat... 17:15 characterize 114:23 204:20 271:12,13 charge 165:13 165:16,17 chart 59:13 250:14 265:3 266:22 269:7 308:22 check 106:4,8 106:11,24 checkmark 73:11,16	chest 9:12 chief 90:21 child 208:5 children's 208:23 chosen 293:22 circle 57:20 circulated 232:15 circumstances 13:11 14:24 148:18 cite 13:1 claim 10:3,4,7 10:10,15,18,20 23:24 28:24 106:18 171:8 212:7,9,12,14 212:16 214:10 214:14,24 216:14 217:6,6 217:16,20 218:4,10,14,21 220:18 221:13 223:19 227:16 228:4 245:22 256:22 258:17 294:21 311:20 claimed 110:22 claiming 17:16 253:25 254:3 claims 9:13,15 9:18 20:8 26:1 clarification 255:21 clarify 99:22 99:24 290:16
--	--	--	--

clarifying 100:4 101:8 111:22 class 203:8,10 203:23 clauses 304:5 clear 9:3 12:8 14:17 27:16 116:5 118:8 206:15 221:1 clearly 13:21 14:15 39:16 46:24 181:19 clerk 93:20,23 94:3,5 97:7 113:10,16,19 113:23 124:1,4 124:8,11,14,19 137:22 175:16 175:23 176:3,6 231:24,25 287:18,20,22 clicked 306:13 client 60:3 clients 18:14 clip 84:2 clips 84:2,11 close 6:6 52:5 111:3 245:11 277:6 280:4 closed 192:18 194:8 197:9 closing 13:1 21:1,4 193:22 195:10 313:21 314:21	closings 286:12 286:14 314:24 code 224:21 226:4 271:4 cofounder 177:8 280:25 cofounders 275:22 277:2 cohen 173:14 202:6 coin 11:18 18:3 24:23 39:11,11 43:2 52:2,8,15 54:19 56:24 57:20,20,23 60:2 120:16,16 120:17,18,18 120:20 125:25 126:3,8 127:12 128:11 130:12 144:7 150:9 246:21,24 270:7 302:18 coins 8:8,9 34:12 42:4 52:2,16 54:1,3 57:17 91:6 96:12,20 100:12,25 102:19 103:10 103:16 107:23 109:24,25 111:15 112:4,5 112:6,7,11,13 112:13,15,17 116:9,14 117:12 119:16	120:7,11,13,14 120:15,21 126:12,14,18 127:8,24 128:2 128:4,7,15,17 130:13,18 131:17,20 133:22 140:6,7 159:7 161:1,4 161:6,10,13,18 161:21 162:1 169:8 199:2,6 199:11 236:8 236:12,14,24 239:3 242:13 252:1 271:16 296:12,16 303:11 305:17 305:19,25 collapse 80:7 colleagues 204:11 205:9 283:21 collect 75:8 112:12 collectively 110:14 229:13 267:25 color 73:13 colors 73:13 column 44:3 45:21,24 46:2 238:8,9,16,17 238:18,24,24 239:5,8,12,16 241:15,18,21 243:1,4 244:17	244:22,23 245:1 247:10 247:13 248:3 248:11 250:16 256:13 257:25 260:1,4,4,16 261:10 264:6 columns 247:8 combination 172:15 come 10:15 27:24 31:5 81:15 83:12 168:11 176:17 179:20 187:20 191:16 208:16 219:19 221:7 234:13 246:9 248:1 252:24 253:18 275:8 286:17 296:21 311:8 314:15 314:16 comes 159:14 191:17 268:13 coming 30:5 111:15 179:13 181:15 284:21 commencing 195:9 comment 50:11,13 61:17 314:6 committed 88:15 committee 110:17,18
--	---	---	--

[communicate - connection]

Page 19

communicate 144:1	288:14	92:18 297:2	conduct 10:21
communicated 136:12 137:3 148:20 149:5	compensate 312:10,19	302:17,18 303:25 304:2	14:23 295:12
communicati... 188:10	compensated 39:17	311:22,23	conducted 107:22 122:9 123:9
communicati... 10:17 115:13 135:14 139:15 151:3 174:2 191:8 218:20 220:11	compensation 19:22 194:18 194:21 199:18 199:19 272:23 289:22,24	comprised 232:19 235:18	conducting 108:5
communicati... 104:12 115:25 133:20 170:11 170:15 174:21 214:15,19 219:11	competence 24:4	compute 226:6 226:15 297:5 299:13	confer 225:19 283:20 287:3,5
community 89:2,3 149:16 149:18,21 303:25 304:2 311:23	complain 13:7	computed 97:2	conferred 183:3
company 23:6 35:20,22,24 42:25 43:8 76:18 176:17 176:20,24 188:20,21 189:25 192:25 199:8 201:20 203:24 224:8 244:3 250:8 281:1,24	complains 16:19	computer 6:12 67:9 137:16 178:20 284:6 307:8	confidentiality 42:8
	complaint 15:20	computers 55:4	confining 285:7
	complete 112:10 265:19 288:24	conceal 15:24 274:4	confirm 27:17 106:12 151:14 157:13 296:9
	completed 38:5 226:25	conceivably 287:10	confirming 141:3
	completely 17:7	concept 24:6 40:4,12	confirms 218:21
	completeness 171:12	concerning 9:23 20:10 103:19 133:15 141:3 152:22 168:20 287:25 298:15	confused 153:7 155:19
	completion 26:10	concerns 109:23,24 110:20 211:5	confusion 40:6
	complex 63:7 107:17	conclude 281:6	congregated 303:15
	complied 165:11	concluded 281:4 315:14	connected 124:5 263:5
	comply 302:2	conclusion 14:16 19:11	connection 32:10 94:1 96:4 100:11,23 102:22 111:22 117:10 118:15 119:15 177:10 192:24 229:20 230:20 308:2
	complying 165:17		
	compound 24:19,22 92:15		

[connection - copy]

Page 20

309:12 312:20 connor 5:8 60:16 114:7 115:23 124:22 158:15 172:5 172:15 173:15 174:12 215:10 215:11,22 217:7 303:13 303:13 consent 31:1 34:8 202:14 consider 244:6 280:25 consideration 20:23 194:22 196:10 199:20 289:25 consisted 20:24 consistent 227:23 262:21 consists 207:7 208:19 constitute 96:12,20 constituted 214:15 constitutes 80:23 constructing 226:5 246:1 consultant 176:13 contact 6:6 93:20	contacts 77:19 contained 67:15 containing 206:11 contains 235:22 contemplate 197:7 contemplated 17:23 21:7 22:17 193:25 contemplates 21:11 197:8 contemporan... 50:2 contend 266:4 content 308:22 contention 69:13 contents 33:7 206:24 context 14:1 80:9 84:21 85:20 171:13 206:17 continually 189:9 continue 14:22 89:1 171:15 225:8 297:18 continued 11:2 19:17 71:19 92:11 217:18 304:15 continues 114:18,23	115:11 116:4 continuing 115:1 contract 19:12 23:22,24 36:7 253:22 contractor 250:18 251:2 contractors 251:7,13 contracts 10:18,20 36:9 contradicted 10:18 contrary 10:21 16:20 156:11 156:14 157:1,2 contributed 120:21 control 24:20 25:2 36:8 37:24 41:19 54:14 182:4,6 182:12,19 183:6,7,10 189:17 190:13 190:15,19 200:21 224:11 260:15 291:17 controlled 25:15 39:24 161:8 235:25 237:14 238:18 242:6 247:5,18 247:20 257:15 258:3 262:19 265:12,17	276:2 296:25 convenient 83:10 conveniently 308:24 conversation 114:20 172:18 217:23 298:14 conversations 101:1 103:1,3 108:2,21 115:4 115:6 117:24 118:13 136:9 136:11 152:19 152:24 166:23 166:25 167:7,9 173:22 298:17 298:20 conversion 8:13 9:16 convert 285:15 converted 11:21 273:17 converting 285:1 convey 135:24 conveyed 136:21 cooks 37:15 copied 172:3,8 215:3,8,9,20 copies 6:10 15:8 214:25 copy 32:19 46:15,16 47:5 49:9 70:12,15 137:8,11 138:4
---	---	--	---

[copy - couple]

Page 21

187:3,8,13,14 188:2,4,7 205:14,21 209:23 223:11 231:12,13 259:16 292:12 292:17,25 307:10,11 copying 308:25 corner 36:23 186:15 224:2 corporate 40:2 corporation 38:16 corporations 38:18 40:3,13 correct 25:5,14 28:14 32:5,11 32:23 33:8,23 35:7,12,18,22 36:2 37:17 41:5,8 43:5 46:10 47:23 49:20 51:16,20 54:12 57:21 58:13 59:4 68:8,11,20 70:8 75:21 76:17,20 78:14 78:17,25 79:4 80:13,16 81:4 81:5 85:8,13 86:10,19 87:3 87:5,23,24 89:6,18 94:14 94:15 95:4 96:6 98:9	99:19 100:1,16 100:25 101:9 102:23 103:5 103:19,25 104:1,4,5,7,8 104:10,14 105:5,15,16,18 106:22 107:8,9 108:21 109:16 110:3 111:11 111:20,23,24 122:12 125:16 125:24 126:13 126:19,20,21 126:22 127:7 127:25 129:7 129:10 130:10 130:15 131:18 131:20,25 141:12 142:19 145:11 147:14 155:21 156:11 159:3,8,22 160:16,17 161:2,9,11 162:10 163:25 164:23 168:24 180:17 186:21 186:23 188:23 190:9,25 191:11 195:7 200:1 202:7 204:6,11 205:9 207:6 208:10 209:6 210:9 212:5,10,11,14 213:5,13 214:2	216:15 217:2 217:10 218:9 219:13 221:15 221:16 222:9 222:16 223:20 226:21 227:2 240:6,7 243:8 245:25 247:17 250:7,11,13 251:19 252:13 252:14,16 258:5,10,13,19 259:21 261:11 261:13 263:18 270:8 271:6 272:4,8 273:6 274:3,20,23 275:1 277:3,19 277:21 279:24 280:20 283:18 285:20,23 290:18,19 292:10 298:15 310:2 correctly 37:19 131:2 138:13 145:12 159:6 160:20 167:23 215:25 226:20 242:16 251:3 255:10,13 265:14 273:11 273:12 282:20 285:11 312:2 correspond 235:6	corresponding 68:3 248:5 cost 300:19,22 300:24 costs 13:6 291:21 297:4 counsel 6:8,19 7:1,18 13:17 18:17 23:19 30:22 34:22 44:23 48:22 58:24 85:18 113:1 114:2 157:13 187:14 205:25 210:8 210:10 222:21 222:22 225:19 237:24 238:6 256:11 266:7 287:3 294:18 309:5 count 52:8 counted 294:24 counting 266:24 268:12 269:4 country 302:4 316:21 couple 11:20 100:4,4 102:21 108:22 112:21 139:19 159:12 185:5,6 223:11 223:13,16 284:5,8 295:8 296:2 306:9
---	---	---	--

[course - court]

Page 22

course 10:21	70:13,19 73:1	123:12,15,18	218:24 219:1,5
11:3 13:18	73:20,24 74:4	123:25 124:2,9	219:8 220:1,24
14:22 85:21	74:10,14,19,21	124:12,16,21	221:4,9,21,25
court 1:1,18	75:13 76:24	125:18,21	223:2 225:6,13
6:2 7:19,22	77:11,20,23	134:3,5,8,11	225:17 230:13
8:19 12:20	78:11 79:9,16	137:9,12,15,24	230:15 231:10
14:25 15:1,7	80:19,25 82:10	140:20 141:17	231:13,17,22
15:12,14,17,19	82:21,22 83:1	143:7 145:15	232:3 235:19
16:9,13,16	83:6,10,13,17	147:1 149:2	239:23 244:10
18:23 21:13,19	83:19,22 84:2	150:15,23	244:13 254:4
21:22,24 22:3	84:8,13,23	154:17,25	259:13,16,21
22:7,10,12,19	85:3,16,24	155:4,7,13	260:16 261:1,9
24:5,9,24 25:3	86:4,22 87:12	156:5,8,23	261:14 264:6
25:8,14,19,24	88:7,17 90:23	157:11,14,16	264:13 269:16
26:3,6,11,13	92:1,14 93:4,6	158:4,14,24	269:20,25
26:15 27:6,16	93:8,13,16,24	162:12 165:2	271:23 272:16
28:3,12,18	94:4,7,10,17	168:4 169:23	273:9 275:15
29:1,3,5,12,15	94:21 95:16,21	171:17 174:18	275:17,24
30:13,15,25	96:16 98:4,9	174:23 175:1,4	276:19,22
31:8,11,20	98:16 99:8	175:7,12,20,25	277:23 278:4
32:3,15 33:12	100:15,19	176:4 177:15	280:14 283:22
34:1,16 35:15	101:23 102:2	178:4,9,13,17	286:1,7,13,19
36:14,18 37:4	102:11 105:11	178:20 179:14	287:1,5,12,15
38:11 39:1	105:22 106:8	179:25 180:21	287:19,21
40:8 41:21	107:3 110:12	181:10,13,18	290:9,20 291:1
43:19 44:9,15	112:23 113:6,8	182:11,21	291:4 292:16
44:20 45:1,11	113:14,18,21	183:4,8,12,17	293:2,5 295:6
46:23 47:2	113:24 114:3	183:19 184:7	295:10,15
48:3,20 49:11	116:19,25	184:10,22,24	298:24 299:6
50:10,17,22	117:2,4,6,9,20	185:1,13,16	302:14 306:4
52:20,23 53:1	117:23 118:2,7	186:2 187:2,17	307:4,10,14,24
53:13 55:2,9	118:14,20,22	187:24 188:6	308:4,9,12,19
55:18 58:16,25	118:25 119:11	189:22 191:14	308:24 309:2,2
59:11,22 60:6	119:20,23	191:17,21	309:7,9 310:7
62:4 64:17	120:3,24 121:5	194:3 195:23	310:10,13,15
65:18 66:4,7	121:8,21	200:4,9 205:1	310:19,22,25
66:18 67:13,22	122:15,18	205:4,12	311:2,4 313:10

313:14,17,20 313:25 314:6 314:10,16,20 314:25 315:4,7 315:13 court's 6:6 228:18 229:21 270:23 courtroom 6:5 6:7 30:21 31:2 31:4 46:20 56:20 93:19 124:10 125:9 216:5 217:1,12 217:22 313:25 314:9 cover 18:13 24:3,5 104:17 266:7 covered 158:18 covering 260:12 covid 6:5,6,7 cpa 293:22 crafted 24:17 crazy 300:22 create 226:9 296:4 created 36:6 60:4,15 145:24 182:15,16 183:13 209:5 236:4 246:19 284:3 307:21 creation 226:12	credit 130:23 131:1,3,7 creditor 14:20 creditors 7:3 13:15 14:17 17:5 critical 11:4 criticism 73:14 critique 63:11 cross 5:3,3,7,7 29:25 34:16,18 58:16 85:25 86:4 95:24,25 96:16 110:2 111:10,21 124:22 158:19 158:23 159:20 163:23 164:21 165:23 169:1 178:10 179:24 180:5 186:2,5 225:8 276:20 288:1 298:24 crunch 258:21 crypto 25:4 70:25 71:7 89:10 146:19 201:6 202:19 202:20,20,21 208:8 283:13 288:15 301:7 306:12 cryptocurren... 142:10 143:22 cryptocurrency 64:5 176:13,15 176:18 278:9	cryptography 206:21 cryptopunk 73:3 146:24 147:1,2 cryptopunk's 75:2 cryptopunks 147:5,7 crystal 9:3 12:8 crytopunks 73:19 cto 177:8 current 163:6 228:24 309:18 currently 176:12 250:6 cursor 46:7 custodian 45:6 161:6 custody 200:21 257:12 customer 19:3 19:16,18 20:1 23:1 25:22 47:22 48:8 51:25 126:24 132:10,12 140:14 141:15 142:3,7,12,23 142:25 143:3,9 153:13,15,20 154:2,7,12 297:20 customers 52:17 88:24	91:2 142:2,3,9 cybercrimes 273:23 d d 5:1,3,7 6:1 21:21 81:24 236:6,10,13 238:16,17,18 243:14 246:24 dai 11:17,21 25:18 204:6,9 204:18 205:9 246:24 267:4 269:15,21,25 270:4,7 271:10 271:25 273:16 275:8 277:2,16 277:25 278:6,7 280:23 302:11 302:19,21,23 303:7 304:1,17 311:8,19,21 daily 57:17 damages 272:10 273:4 dan 42:11 43:16,18 45:23 82:17 97:6 307:12 dance 221:5 dangerous 209:24 daniel 4:21 98:13 203:8,23 dao 311:23 data 297:6 308:5
---	---	---	---

[date - defendant]

Page 24

date 32:8 51:6 52:5 74:7 78:9 80:21 86:11,11 98:19 151:11 152:1 172:24 179:3 186:15 186:18 193:22 195:4,10,10,17 206:10 211:17 211:24,25 218:1 239:5,9 242:2 248:11 258:9 259:10 260:1,2,3,4,7 261:10,11 264:11 265:22 269:6 270:11 316:25	days 11:20 27:5 89:7 91:16 184:20 185:8,14,15 186:22 195:3 214:12 223:12 293:17,19 dead 92:16 deadline 182:10 230:6 deal 37:15 dealings 21:8 deals 30:3 dean 4:10 30:7 93:11 107:6 158:17 170:24 deanna 15:6 46:23 55:2 97:5 113:14,16 231:22 debank 20:5 64:1 103:21,22 104:2,6,9,15 104:15,17,23 105:1,2,5 111:10,12,14 123:2 145:7,10 162:9,12,13,17 162:22,23,25 163:2,8 167:19 167:19 282:25 283:6,14,16,16 283:17 289:14 304:23 305:2,3 305:8,21 306:2 306:7,13,17,19	debited 115:2 debtor 1:10 december 19:2 19:25 22:16 33:4 38:4 44:18 47:9 51:11 82:5 84:15 86:14 98:22 117:4 125:2 137:8 138:5 197:18 205:13 210:11 210:25 211:15 211:17,22,25 212:5 213:1,5 213:23 214:2 223:24 228:21 230:7,9 232:13 232:17 233:13 234:1 235:7,14 264:18 265:22 265:24,25 276:5 277:17 decentralized 299:21,22 303:17 311:23 decide 18:24 25:24 decided 213:24 216:19 decision 6:9 48:25 decisions 90:15 90:17,19,20 291:9 declaration 5:14,15,16	26:23,24 27:8 27:9,23 28:15 29:8 32:10,19 32:21 33:19,22 34:25 35:4 78:13,19,21,23 100:15,18 116:22 117:2 191:4 192:3,5 197:22 210:21 declarations 27:4,14 94:13 94:25 95:10,17 declare 32:22 33:7 278:6,8 279:4,17 declared 278:19 279:8 279:11 284:22 285:2,9,14,17 285:21 declaring 279:1 dedicated 77:17 deduct 279:24 deducted 147:21 170:2 deed 28:1 deemed 160:13 defeat 84:6 defendant 5:6 11:8 15:21 18:19 43:16 119:14 179:11 255:23,25 257:15
--	---	---	---

defendant's	107:8,10 108:3	121:12,18	287:20
13:17 53:14	109:3 110:5,9	122:3,11 126:9	delayed 13:8
56:5 97:11,12	111:13 117:9	126:11,13,16	delivered
102:17 116:16	117:12,13	126:18,21,23	111:3,4,5
134:2,13 135:9	118:15 125:1	127:6,13,24	227:3 233:25
139:10 150:20	127:1 159:22	128:15,18,25	demand 8:15
150:21 166:5	161:2,9,13,17	132:17 141:3,7	11:1 120:11,17
167:13 177:17	161:20 162:17	144:25 145:5	201:6 202:13
178:3,6,16,23	163:17 164:18	153:2,6,14,16	203:1 205:7
179:10,15	165:24 167:25	153:20 154:2,7	292:9,15 294:8
180:20,24	168:7,18,20	154:12,19	294:11 295:17
181:2,7,22	169:15,18	155:17 159:3	demanded
200:21 239:6	170:17 175:3	161:10,13,18	10:23 11:16
248:20 256:23	187:14 188:20	161:21 162:18	204:16 292:17
262:3 264:23	200:20 228:20	163:17 164:22	demanding
267:1 268:18	229:4 235:11	165:3,11	11:10
268:21 270:4	235:19,25	167:25 189:14	demands 11:2
274:13,16	237:12,14	194:15 242:10	demonstrate
288:2	238:1,19,21,22	defi's 164:18	145:10
defendants	239:13,17	define 290:12	demonstrated
1:16 5:19 8:6	247:6,19,23,23	defined 194:15	12:5
8:20,24 9:20	258:3,18 259:2	229:3,10	demonstrates
10:1,8,12,15	259:11 262:20	290:12,17,20	12:7
10:23 11:5,9	264:1 265:12	290:25	demonstrative
11:11 12:11,20	267:16	defines 198:23	259:9,17,24
13:21 14:4,21	defense 7:17	defining	261:2,10
16:3,6,18 17:7	10:2 12:24	198:23	263:16 264:17
17:8,9,17,23	13:6 26:9	definitely 75:9	denied 9:21
28:10,24 29:13	36:16 42:5	103:6 109:12	10:10,11 216:6
34:2,4,5,9,10	49:8 306:23	118:23 263:8	217:1,13,23
34:13,22 55:20	defi 23:12,17	273:2,2 288:24	dennis 277:4
94:24 96:3,11	24:15,19 34:4	definition	280:19
96:19 100:10	57:18 58:2	203:14 207:17	deny 26:13
100:12,22,25	61:21 71:1	208:1 268:17	29:14 51:10
101:4,12,16	104:3,4,7	degree 281:6	denying 13:7
102:12 103:9	107:8,10 108:4	delay 13:10	29:16 62:19
103:15,18	109:4 111:13	14:1 29:14,16	

department 30:10 87:7 301:10	deploying 19:3 54:11 126:23 128:17 141:6 143:22 153:5	deposit 93:1 deposited 25:22	154:12 derived 236:5 236:10
departure 145:22 146:5 147:5,8,11,25 148:7,19,19,25 149:5,8 152:7 152:14	deployment 23:1 41:18 42:1 47:22 48:8 50:4 51:21 55:13 58:2 61:9 90:14,17,18,20 126:1,3,8 127:9,13,24 128:1,11,25 129:2 130:12 132:4,5 158:10 161:13,21 163:9 165:13 165:17,20,21 182:5 199:2 202:19 236:9 236:12 283:12	deposition 112:20 113:2,5 113:25 125:2,3 136:23 137:5,8 138:5 141:22 141:24 142:15 144:9,11 154:23 156:17 157:23 158:1 170:20 188:3,4 207:24 212:21 212:22,23,24 213:5,7 214:8 215:13 216:3 225:23 226:23 227:8 272:13 273:14 275:23 282:10,22 311:13 312:5 313:2	describe 118:5 140:20 145:15 198:24 302:14 described 172:8 193:23 202:23 222:9 268:18 describes 265:7 describing 312:18 description 5:13,20 222:12 249:1 250:20 257:25 designed 112:11 desires 120:2 desist 86:9,18 87:2,8,18 despite 8:15 20:8 22:20 88:23 220:6 destination 262:13 274:1,5 274:6 destroy 271:3 292:12,17 detailed 203:9 details 78:3 determination 160:6 224:12 291:18
depend 143:23 depending 165:8 deploy 19:17 19:24 34:3,6 36:5 61:6,10 61:14 130:15 140:14 157:21 161:10 169:8 169:17 deployed 63:7 68:6 100:13,25 103:11 112:13 117:12 122:3 126:18,21 128:4,8,14,19 131:18,18,20 131:22 132:6,8 133:22 140:12 153:2,14,15,19 154:1,5,6,9,11 154:18,19 155:17 159:2 159:15,17 161:6 163:1,7 189:13,17 199:6,11 202:20 281:21	deployments 20:9 61:8 90:25 111:13 126:11,13,15 126:16 127:6 129:7 136:15 136:18 140:23 141:4,12,14 145:5 153:8 160:4,24 161:16,18,25 162:15,22 163:20,21,22 165:8 166:3,15 167:18,19	depositions 212:25 depositors 13:15 149:20 149:22 deposits 19:3 19:16,18 20:1 23:1 25:23 48:8 51:25 126:24 132:10 132:12 141:15 142:7,9,12,25 143:3,9 153:15 153:20 154:2,7	

[determinations - disputing]

Page 27

determinations 288:21	303:4 305:17 305:19 309:19	210:14 224:20 224:23 270:22	discussed 78:8 125:8 127:12
determine 241:6 297:25	differently 69:3	directing 225:22	128:12 129:2 133:4,14,17,21
determined 160:4 166:2 199:13	difficult 12:12 12:13,19 297:25	direction 203:1 229:4 247:23 270:17	138:23 144:3,7 145:19,21 146:7,9,12
determines 288:15	difficulty 55:3 dig 286:15	directly 6:21 85:4 128:18	147:4,20 148:16 152:11
develop 226:2 226:3 227:12	digital 10:24 41:10,25 51:12	177:9 255:19 256:4 311:22	152:14,17,20 170:1 173:20
developed 162:3	51:13,18,24 52:10,12 53:23	directors 41:6 directs 202:18	275:23 discussing 53:8
developer 250:18	54:6,10,23 55:13 68:7	203:7 disagree 136:2	59:16 110:20 160:15
developing 224:21	180:15 200:20 207:4	disappeared 54:22	discussion 180:1
development 226:16	digits 236:19 direct 5:3,3,7,7	discipline 6:14 disconnected 7:11	discussions 50:4 114:24
differ 182:21	31:13 36:13 60:1 61:5,10	discovered 18:11	128:24 133:15 152:22 161:16
difference 40:11 112:9 121:24	61:14 79:8 94:11 95:11	discoveries 135:24	173:15,17 217:17
different 21:4 40:3 42:24 65:3 66:14 69:2 103:23 111:16 115:22 120:7 129:9 137:4 141:21 144:8 145:17 159:12 164:10 168:22 174:11 183:25 251:8 257:14 260:3 276:17 295:8 295:10 296:23	130:20 138:10 143:16,17 144:20 176:8 179:19,21 193:17 194:11 196:8 203:5 228:16,17 231:3 259:23 292:25 295:4 299:4,4 302:8 308:14 311:12 312:14 directed 61:7 197:3 203:19	discovery 26:10 219:4 222:11,18 223:6 308:3 discuss 24:12 58:1,2 119:3,9 123:6 127:1 130:13 146:15 148:18 153:1 154:1 160:18 170:9 301:14 301:15	display 70:3 displayed 305:8 displays 183:25 dispute 16:6 17:22 19:10 24:13,14 44:9 88:15 273:5 310:18 disputes 249:16 disputing 44:11

disrespect 43:16	115:16,17 117:1 135:11	documented 288:14	89:1 92:6 105:20 112:15
dissatisfied 293:20	135:13 139:12 139:14,18	documents 42:13 43:3	140:6 141:7 154:12 204:10
dissipate 12:21 14:5,6	150:25 174:5,6 177:18,20	44:17,24 46:17 58:10 94:23	220:20 237:10 264:2
distinct 19:1	178:21 179:13	95:3,7 97:1,17	domain 201:17
distinctions 40:1	180:18 181:24 182:1,8 183:6	187:5 192:22 202:12,15	201:23 double 268:12
distractions 13:19	183:7,14,14,15 183:20,24	206:11 219:4 221:20 223:19	269:4 doubt 43:7
distributed 21:12	184:17 186:16 186:18 187:7	294:23 307:25 308:5,7,13,15	99:5 296:10 doubting 43:10
district 1:2	190:2 191:23	308:16 309:3	49:16
divided 277:7	193:11 197:3	docusign 198:4	downloaded 284:1,4,11
doc 3:5,11 81:19	197:17,25 198:3,15 199:7	198:10 doing 39:9	downsides 107:12
document 28:20,21 32:17	201:11 202:13 204:20 208:17	79:8 109:3 113:3 121:17	dozen 275:2
33:4 38:24	208:19,22	123:7 140:6	dozens 8:11
42:18,21,23	209:1,5 210:7	143:12 171:24	draft 35:6,7,12
43:3,4,8,11	210:11 221:13	171:24 249:20	drafted 22:20
44:6,8,13,16	221:19,22,23	253:2 296:14	35:4,8
44:18,20 45:5	221:25 224:7	297:16,24	drafts 35:5
45:6,10 48:2	224:23 228:2,6	302:1,2 309:21	dramatically 54:14
48:17,23,25,25	237:25 253:20	dollar 18:1,6,9	draw 109:23
50:11,23 52:3	270:19 280:16	48:12,13 52:7	112:10
55:15 56:10	280:20 281:3	52:16 54:2,15	drew 276:1
57:1 65:19,21	282:2 288:5,7	57:20 150:9	drive 120:20
66:7,8,9,21	290:8,12 292:7	159:10 171:25	drives 120:11
67:17 73:21	295:19 307:21	237:9 239:8	drove 120:17
79:11 81:14,16	308:14	248:7 252:1	due 8:15 21:3
82:19 97:14,17	documentary 10:16 78:16	256:14 266:21	22:18 150:8
97:20,25 98:24	documentation 141:10 168:19	278:19 307:22	196:3 211:24
99:6,15 100:14	288:22	dollars 8:10	211:25 282:3,8
101:6,8 102:8		10:10 17:17	282:16 293:18
102:14,20		51:8 54:9 68:7	

[due - email]

Page 29

<p>296:18 303:7 duped 22:22 duplicates 308:25 duration 237:3 dx 56:9 79:8 82:16,18 97:4 137:14 307:14 dx09 49:8,17 49:22 dx12 54:22 55:8,11 dx23 70:11 dx30 75:10,12 dx34 42:5 dx35 72:23,24 74:15 dx36 74:17,18 dx37 66:6,12 dx39 36:20 37:2 dx40 52:19 53:10 dx41 59:8,19 dx6 76:23 dydx 108:10 109:9 283:2 299:20 dysfunction 16:7</p>	<p>203:6 214:21 214:24,25 215:3,4,11,19 215:20,20,23 216:6 218:19 222:15 223:4,4 223:5,6,8,12 223:14,15 227:25 228:2,8 228:12 238:24 238:24 244:17 244:22 248:3 316:1 eager 41:8 earlier 55:19 134:1,23 153:2 155:25 157:18 173:20 230:5 232:7 284:1 289:19 298:12 299:25 302:12 304:22 earliest 213:22 early 18:11 19:19 51:24 115:2 127:2 146:18 147:2 149:10 159:25 166:3 168:16 169:10 200:19 211:22 212:18 213:16,23 214:2,2 217:19 220:21 222:5 254:18 298:21 301:23 309:14</p>	<p>earn 21:6 39:7 288:15 earned 40:24 86:9 272:24 earning 54:12 easier 200:8 231:14 easily 63:3 283:12 eastern 228:21 easy 12:18 63:12 70:3 ecosystem 162:14,23 247:22 254:20 255:15,19 263:4 ecro 2:5 effect 44:8 228:8 256:16 311:10 effective 38:4 47:9 195:4,10 195:17 206:10 efficient 299:20,22 efforts 17:4,24 egregious 11:13 eight 17:20 20:9 24:1 248:23 eighty 282:11 either 9:7 20:13 21:17 44:14 64:13 79:13 88:5</p>	<p>97:22 118:2 130:20 133:19 146:16 153:25 165:7,20 168:19 171:21 172:5 177:4 188:15,24 209:16 213:23 214:11,25 215:9,21 240:16 265:8 299:15 301:23 302:3 314:1 elaborate 108:2 174:18 electronically 6:11 187:25 elephant 17:14 18:5 eliminate 245:4 elizabeth 4:11 else's 122:1 email 5:24 10:16 36:24 37:8,9,11,14 37:22 49:18 50:2 53:4,7 55:11 57:3 58:6 59:15,25 64:1 70:22 77:2,5,6,9 115:19 119:12 119:18,18,20 119:23,25 133:20 137:20 172:8 174:8</p>
e			
<p>e 2:1,1 4:1,1 5:1,2,2,10 6:1 6:1 191:9,24 201:12,16,22 201:25 202:12 202:17,18</p>			

<p>237:24 252:11 263:14 266:7 266:12 284:2 288:4,8,11,12 292:9 295:23 295:25 296:1,3 296:4,5,14 297:14,15 emailed 72:6 259:17 emails 36:25 78:22 171:10 172:3,4,4,7 173:11 284:4 284:10,12 289:13,14 emanuel 249:13 emboldened 14:22 emil 241:16 employed 17:13 125:16 125:18 181:4 employee 108:6,20 117:22 employees 18:12 20:4 61:5,10,14,20 117:18 139:4,6 213:14 251:5,6 employing 117:17 employment 29:6</p>	<p>empty 67:6 enclosed 203:2 encloses 202:12 203:13 encompass 104:16 ended 75:20 226:19 257:9 268:25 285:1 ends 297:16 engage 143:18 engaged 20:3 20:14 122:21 222:18 310:3 engagement 146:22 engaging 101:2 122:22 enlarge 234:18 enormous 8:25 enrichment 9:16 ensure 8:19 enter 8:19 12:16,22 13:22 14:25 31:4 204:9 entered 19:20 20:18 40:15 127:16 205:12 292:15,16 entering 299:14 entire 171:18 entirety 313:6 entities 40:13</p>	<p>entitled 196:10 210:23 211:13 235:23 247:3 265:10 272:10 273:5 entity 125:16 190:17 294:17 entry 9:3 equal 120:22 195:1,11 equity 177:6 190:8 250:2 equivalent 204:10 239:9 270:9 erc 184:13 233:21 246:18 246:18,21 247:3,4,11 248:5 250:14 250:17 251:23 252:6,11 254:13,22 264:16,21 265:10,11 266:21,25 267:2 268:9 269:10,10 erc115 68:2 erc20 67:1 68:1 erc721 63:16 63:20 64:14,15 64:23 65:10 67:1,5,12 68:1 erin 123:25 error 150:4,8</p>	<p>especially 234:5 essentially 19:22 20:24 establish 14:24 181:12 established 211:20 244:3 268:15 estimate 225:9 237:4 286:8 estimates 289:1 et 1:12,15 3:1,2 6:4,16 145:18 164:11 283:2 305:23 eth 11:21,21 23:23 233:20 235:23,24 237:17 238:25 239:9,13,17 240:2,4,16 241:2,3,5,7,12 241:22 242:1,9 242:9 243:6,6 243:19,19 244:17,23 245:1,6,14 246:6,13 251:14 253:16 255:22,24 256:14 257:23 258:7 260:7,9 261:17,20 262:2,18 263:17 264:1</p>
--	---	---	---

267:14,22	evening 230:7	111:4 119:21	examination
268:2,8,10,13	evenly 277:8	119:24,25	31:13 34:17,18
268:16,17	event 273:24	134:2,14	58:16 83:7
273:17,19	297:3 302:12	166:12 178:3,5	85:25 86:4
274:2,7,13,16	302:15 304:4	178:6 179:10	94:11 95:24,25
274:18,22,25	304:10 311:24	179:14,15	96:16 107:4
275:3,10 276:7	313:23	181:8 182:8	110:2 111:10
277:11 278:13	events 18:22	183:20,21	111:21 124:22
278:17 281:24	eventually	261:8 288:2	158:14,15,23
282:2,5,7,15	19:11,23 51:25	308:20	159:21 164:21
283:1 284:25	275:10 303:25	evidentiary 3:3	165:23 169:1
285:11,13,14	everybody 6:2	3:6	175:1,2 176:8
297:1 300:18	91:4	ex 158:19	178:10 180:4
303:10,12,14	everybody's	exact 32:8	186:3,5 225:8
303:15,17,18	311:4	82:25 129:22	276:20,23
ether 251:4	evidence 8:1	131:6,9,12	286:20 287:17
ethereum 16:5	8:11,24 9:15	133:9,13	287:23 288:1
51:9 52:4,5	9:23 10:5,6,16	149:24 150:7	298:25 308:25
54:13 62:24	12:6,10 13:9	150:11 151:11	310:23 311:6
63:6,9 108:10	16:16 18:25	153:18,25	313:11
120:9 131:24	20:13 26:7,20	154:5,10,13,16	examine 29:25
132:6 142:7	27:4 30:5,16	154:22 155:23	180:5 298:25
143:1 162:14	30:18 33:11,13	156:16 157:4	examined
246:19 300:11	33:14 35:1	157:20 159:14	308:24
300:15 303:24	37:3,5 38:6,9	159:19 160:8	example 8:13
305:21	44:6 45:10	173:22 300:18	11:13 227:22
etherscan	46:13 47:5	exactly 129:16	239:16 245:22
63:14,21,25	48:2 49:1,23	129:19,20,21	246:21 250:20
64:9,10,11,22	50:17 53:11,13	131:10 133:3	256:24 274:12
64:25 65:2,4	53:14 56:4,5	141:19 142:8	examples
65:25,25 66:1	57:2 59:13,20	142:18,20	238:20 243:18
66:3,12,15,17	59:22 65:22	143:2 148:17	exceeded 82:2
67:8,24 182:2	66:6,8 70:11	162:24 167:8	exceeding
182:3 183:16	72:24 73:21	173:21 180:11	291:19
etherscans	75:11 76:23	187:16 189:6	excel 42:6,6
27:12,15	78:19 95:18,20	209:11 211:12	232:18,25
	97:5 110:5	233:16 261:13	233:13,17,18

235:1,8 264:14 except 284:5 exception 223:16 excerpt 84:22 excerpted 84:4 excerpts 85:18 excess 120:11 120:17 159:6 exchange 112:21 164:11 177:1 248:8 256:16 278:18 285:22 exchanges 120:10 170:21 299:23 303:10 303:16,17 exclude 245:15 264:8,24 excluded 31:2 257:19 excluding 199:14 252:6 257:18 262:1 267:16 268:7 exclusive 199:19 289:24 excuse 21:13 56:4 57:3 97:12 122:15 164:2,5 205:1 excused 93:8 123:15 175:4 execute 100:7 executed 19:6 22:25 41:7	100:2,5,6,8 executive 90:21 202:7,9 executives 213:14 288:10 exempt 307:23 exercise 240:12 241:10,11 253:11 258:16 259:7 265:6 exhausted 311:5 exhibit 5:14,15 5:16,17,22,23 5:24 20:22,23 21:14,15 22:1 22:4 23:15 26:18,23,24 28:4,14,18 29:3,6,7,18,23 32:18,19 33:14 36:16 38:7 42:6 44:17 46:13,16 47:5 47:7 49:8,10 50:17 53:14 55:21,22,23,24 55:25 56:1,2,8 56:9,9,14 66:4 66:5 70:15 79:11,14 84:6 97:4,11,12 101:20,23 102:4 105:13 134:2,10,13,16 135:8,9 139:10 150:21,22	177:18 178:3,6 178:16,23 179:10,15 180:3,4,20,24 181:2,7,15,17 181:22 182:25 183:21 186:10 187:9 193:10 193:16 196:20 197:2,4,15,17 198:9 201:9,11 202:1 205:16 205:21 211:10 223:22 228:16 228:17 229:23 230:19,22 231:4 232:12 232:14 234:1,1 235:10,14,22 261:3,6,7,10 280:7,16 281:3 283:18 288:2 292:20 306:23 307:14 308:6 exhibits 5:21 6:10,11 7:24 15:4,7,8,13,14 15:16 26:18,21 27:7,8,9,18,23 27:25 28:10 30:2,4,17 55:20 56:3,5,6 82:24 83:12 84:1,5 94:19 94:24 95:19 101:21 134:9 134:14 137:14	175:10 178:8 178:18 179:25 180:2 182:22 183:2 187:6,17 187:18,25 198:11 286:5 286:16 299:5 307:1 exist 190:7 existed 220:15 existence 169:12 exists 30:12 115:17 145:16 174:6 221:18 expand 231:18 expect 39:7,13 39:14,19 expected 282:9 expedited 28:22 45:9 222:18 308:3 expenditure 291:20 expenditures 252:18 291:19 expense 17:4 241:15 265:1 expenses 98:7 241:13 242:24 243:2,17,24,24 243:25 244:6,6 247:25 250:15 252:17,17,21 253:6 254:19 254:25 265:2 279:21,23,24
--	---	--	---

280:2 285:15 292:1 expensive 300:17 experienced 79:2 80:6 experiment 297:19 expertise 194:14 expire 193:22 explain 182:12 183:13 261:9 311:18 explained 60:1 explicitly 7:9 expressed 141:10 expressly 58:12,20 59:3 extent 14:2 135:7 241:6,8 external 250:18 extra 260:4 extraordinary 26:8 extreme 79:1 79:25 80:5	58:12,20 60:14 65:16,21 71:14 71:21 80:12 90:14 91:2 103:18 106:6 110:9 114:25 115:3 140:10 150:1,8 156:14 159:21 195:6 196:5 197:7 198:16 201:25 205:11 213:4 217:18 226:13 226:25 229:19 232:14 249:4 299:12 facts 9:19,19 16:8 92:7 failed 19:11 23:7 fails 20:12 fair 43:12 72:9 73:14 82:20 158:18 203:17 243:21 fairly 71:22 146:17 faith 224:12 291:18 296:15 fall 127:3 252:17 falls 16:7 false 157:6 familiar 40:4 63:14,16,17 71:23 73:3 99:16 103:21	145:7 far 10:22 12:7 13:2 17:15 18:4 43:20 44:12 68:21 96:11,19 farming 242:13 fast 140:7 fate 241:3 fates 241:1 father 209:5,20 209:21,25 favor 12:8 14:14 39:9 311:18 features 162:16 february 23:5 51:24 52:11 53:7,17,23 54:8 181:3 200:24 214:11 239:17 250:23 304:12 federal 3:4,11 308:19 feed 72:16 75:7 feedback 46:20 feel 314:11 fees 249:19 282:3 310:1 feld 4:3 7:16 8:5 107:7 158:18 186:8 fell 130:20 304:5	fellow 280:19 festivities 314:17 fewer 96:11,19 214:17 fiat 278:17 285:1,1,21 288:16 fifteen 276:21 figure 17:20 20:9 24:1 131:6,9 151:16 153:18,25 154:5,10,13,16 154:22 155:23 159:10 296:22 figures 237:7,8 file 28:8 279:13 279:15 filed 13:18 17:19 277:20 files 284:2,11 filing 19:13 filings 81:10 final 23:10 196:8 211:22 226:9,10 227:14 230:10 297:17 finalizing 36:9 finally 14:8,16 19:8 21:6 188:20 finance 57:19 64:5 163:14 299:21,22
f			
f 2:1 238:19 239:8 316:1 face 228:9,12 faces 14:10 fact 17:2 22:20 36:8 41:17 45:9 51:18			

financial 87:7	176:14 185:5,6	folks 53:5	formats 63:19
find 27:24	185:8,21 187:7	59:16 77:3	former 32:1
29:19 82:8	201:12 202:1	113:12 273:1	43:9 126:6
84:17 220:14	207:21 208:13	follow 72:20	211:4
233:7 286:5	210:24 211:14	72:21 107:21	forms 20:24
291:12	211:25,25	113:1 121:25	forth 71:5
finder 45:9	212:9,16 214:1	123:9 213:10	199:21 289:25
finding 76:10	214:12,24	283:24	forty 191:17
fine 34:24	216:14,15,24	followed 72:22	293:7
43:19 70:13	217:7 234:25	following	forward 3:12
84:13 94:21	235:22 236:8	32:23 296:15	6:9 10:16
113:21 114:2	236:19 237:17	followups	13:14 26:10
314:5	238:8 260:9,20	283:25	108:15 115:8
finish 37:15,21	260:21 261:17	footnote 229:2	125:14 135:23
64:16 286:13	267:9 283:25	force 48:24	136:2,5 219:19
286:21 287:6	288:12 289:8	forced 135:23	223:8
287:13	292:9 294:12	forceful 157:21	forwarded
finished 37:24	295:18 301:17	forefront	259:18,19
83:7 95:21	302:9	61:20 145:5	found 18:8
287:8	fits 222:12	foregoing	220:7 221:17
fireblocks	five 22:21 84:2	316:3	228:12 240:10
161:5,7	235:3 286:16	forensics 17:6	foundation
firebox 164:11	fixed 261:10	forget 301:10	44:8 47:24
firm 249:5,5,11	flip 67:4 81:22	forgot 77:18	67:16 80:22
firms 249:6	102:6,15	form 17:21	194:2 223:1
295:8	flipping 81:18	23:4 115:18	founder 31:23
first 7:12 9:19	floor 4:16	147:14,16	founders 11:25
17:9 18:21,25	flow 103:22	174:7 206:21	11:25
19:1,3,15,16	fluctuates	211:22,24	four 138:8
20:25 22:15	140:24	227:4 297:6	214:16 280:8
23:16 26:17	fluctuation	formal 10:25	280:10
30:19 34:8	165:9	11:1,8,9 19:4	fourth 197:25
42:2,4 47:7,8	focal 160:22	41:11 50:3	fraction 48:11
65:9 68:3	focus 129:24	230:24	frame 169:9
109:1 110:18	153:13	format 66:14	framework
113:2 135:18	focused 52:17	66:15 260:2	19:22
139:19 172:14	117:21	289:11	

frankly 314:2 fraud 18:13 88:12,15 free 6:5 38:14 38:17,22 39:5 39:14 freedman 4:20 7:19,21 18:17 34:19,22 35:16 36:15,19 37:2 37:6 38:9,12 38:13 39:2,4 40:9 41:23 42:5,15 43:13 43:20,23 45:4 45:12,13,23,25 46:12,14 47:1 47:3 48:1,4,18 49:2,7,14,15 49:22,25 50:14 50:20,25 52:18 52:21,24 53:2 53:3,10,15,16 54:21,25 55:7 55:10 56:19,21 58:18,21 59:2 59:8,12,14,19 59:23 60:7 62:5 63:24 64:18,21 65:6 65:8,23 66:2,5 66:10,11,22,23 67:18,19,22,23 70:10,14,17,21 72:23 73:2,22 74:1,6,17,20 74:22 75:11,14	76:22,25 77:11 77:13,14,25 78:12 79:6,13 79:17 80:18 81:1,6,8 82:11 82:16,23 83:4 83:8,16,22,24 84:9,14 85:7 85:11,23 86:1 86:6,24 87:20 88:2,8,18 90:24 92:3,13 92:17,19 93:5 249:9 309:25 frequent 273:23 frequently 71:24 111:1 133:21 145:2 315:1 friday 201:14 front 15:8 21:14 22:4 36:21 42:18 59:13 65:19 66:7 79:19 96:8 101:23 116:23 119:22 134:6 138:1,4 180:24 187:24 231:10,13 frozen 93:17 93:19 full 71:4 176:10 295:1 296:17 297:6,7 307:6	function 7:6 112:11,17 functionally 80:15,21 81:3 82:1 fund 12:24 13:6 208:23 funds 24:19 25:5,10 41:4 53:19 59:4 79:3 80:6,8,12 126:21,23 128:25 130:15 130:16 153:2,6 153:13 159:2 159:15 182:19 298:8 fungible 34:5 67:11,25 184:3 184:18 246:18 further 13:24 14:21,23 28:13 93:5 107:2 116:18,20 123:11,14 157:12 158:13 169:22 174:25 175:1,2 185:25 186:2 196:10 285:25 292:4 297:14,15 310:21,22	gains 57:16,18 58:12 59:4 60:3 68:10 289:2 gaps 284:19 gauge 225:11 gears 143:25 gemini 278:17 285:12,21,22 general 42:3,7 42:9,18,20,22 42:24,25 44:9 45:2 51:4,6 88:3,4,9,10,11 88:14 97:21 generally 58:5 238:12,18 generate 39:11 51:17 110:10 140:15 generated 18:4 41:4 58:8,9,11 112:18 199:11 207:21 218:4 242:14 getting 35:11 36:4 46:20 114:1 258:25 299:17 giant 18:10 give 21:19 28:12 31:8 44:15 57:14 76:9 78:16 94:7 102:6 113:4 117:13 123:20 124:16
		g g 6:1 239:5 248:11 256:13 gained 14:12	

134:8 137:15	53:1 55:6	223:22 224:1	13:9 14:4,6,20
149:13 154:25	56:17 59:1,11	229:23 230:12	14:23 18:20
157:13 167:17	59:22 67:15	230:15,17	29:24 30:22
175:25 183:23	69:25 70:1,19	231:19 232:1	31:1 36:15
188:4 200:7	74:4,19,21	233:1 235:21	43:17 44:13
201:16 209:21	76:24 77:17,23	243:1 244:9,16	49:7 51:16
213:4 214:4	78:1 79:16,18	244:17,20,22	55:5 57:10
225:7 254:5	83:10,19 85:16	244:22 246:17	65:20 67:7
271:17 286:7	92:1 93:9 94:4	247:2,8 248:14	72:14 73:22
286:20 288:21	94:17 95:21	251:9 252:15	74:2 79:6,8,13
291:12 292:25	96:16 98:1,13	253:12 255:1	79:14 83:1
given 80:21	102:2 112:23	256:11,13	89:14 92:14,16
187:14 200:23	113:6 114:3	259:16 261:14	111:15 113:1
201:3 210:7	115:10 120:9	264:13,16	123:18 125:14
216:15 219:3	121:8,15	267:6 269:6,7	135:8 138:5
271:16 296:5	122:19 124:21	271:18 272:3	165:22 171:3
305:8	125:21 135:18	272:13 276:22	171:15 172:10
gives 103:24	138:1 139:17	276:23 277:23	172:11,22
171:13	141:24 142:15	280:3,7,14	177:1 179:21
giving 141:21	144:11,14	282:10 283:9	186:8 187:10
144:8 214:8	150:17,23	283:22 286:4	188:14,18,24
217:2	151:12,14	287:1,17 288:3	194:22 208:16
glenn 2:2 6:4	154:23 155:4,7	288:11,25	215:6,17
glenn's 206:4	155:13 156:17	290:16 291:4	216:20 225:8
glitch 137:19	156:23 157:16	291:12,13	225:25 231:8
global 299:10	158:1,9,24	292:20 293:13	232:4,14 233:6
gmail 284:14	171:6,17,18	295:4,15,19	234:22 244:10
go 6:9 9:6	178:21 180:5	297:14 299:6,6	244:20 248:14
15:19 16:13	181:20 183:23	299:6 302:11	249:18 260:6
20:22 21:9	184:17 185:1	306:23 311:2,4	260:20 272:3
22:12 23:14	187:2,15 188:6	goes 191:14	276:22 277:2
28:13 29:12	191:21 196:13	195:9 203:25	280:11 281:8
31:12 32:15	196:20 197:15	206:13	286:1,19,20,21
39:1 43:22	198:9,19 201:8	going 3:12 7:23	287:7,9,25
45:11 46:23	203:12 211:9	8:24 9:4,10,23	288:1 293:16
47:2 48:3 49:1	212:21 215:13	10:20 11:17	296:7 301:24
49:13 52:23	215:15 219:8,8	12:21,25 13:1	303:19 310:16

<p>311:12 313:17 goldstein 37:22 49:20 53:6 177:8 good 6:2 7:15 15:3 31:15,16 34:20,21 63:11 96:2 123:24 124:9,24,25 146:22 160:9 175:1 176:4,5 176:7 186:7 224:12 225:11 255:21 287:20 287:20,21,22 291:18 296:15 gotten 303:8 governed 101:13 government 3:9 granular 225:4 great 15:10 17:4 greater 279:21 green 1:19 ground 158:18 grounds 26:22 27:2,10 30:7 group 7:24 207:7,10 299:9 growing 140:7 growth 57:5,6 grunt 195:24 guess 71:5 150:12 180:14 189:20 231:15</p>	<p>232:25 249:6 256:19 257:19 260:22,23 262:5 263:12 272:22 guessing 104:18,20 gump 4:3 7:16 8:4 93:12 107:6 113:3 114:6 158:17 186:7 guys 27:11 233:15 257:6</p> <tr> <th>h</th><td></td></tr> <tr> <td> <p>h 5:10 44:3 45:21,24 46:2 239:12,16 240:25 241:12 242:22 243:1 261:10 264:6 hack 273:1 311:10 312:20 hacking 311:24 half 11:24 12:1 12:2 123:21 264:2 276:1 277:1,1,16 285:5 286:17 halfway 74:24 77:1 hand 7:6 17:16 17:18 31:7 49:9 94:5 124:14 135:8 137:8 139:9</p> </td><td></td></tr>	h		<p>h 5:10 44:3 45:21,24 46:2 239:12,16 240:25 241:12 242:22 243:1 261:10 264:6 hack 273:1 311:10 312:20 hacking 311:24 half 11:24 12:1 12:2 123:21 264:2 276:1 277:1,1,16 285:5 286:17 halfway 74:24 77:1 hand 7:6 17:16 17:18 31:7 49:9 94:5 124:14 135:8 137:8 139:9</p>	
h					
<p>h 5:10 44:3 45:21,24 46:2 239:12,16 240:25 241:12 242:22 243:1 261:10 264:6 hack 273:1 311:10 312:20 hacking 311:24 half 11:24 12:1 12:2 123:21 264:2 276:1 277:1,1,16 285:5 286:17 halfway 74:24 77:1 hand 7:6 17:16 17:18 31:7 49:9 94:5 124:14 135:8 137:8 139:9</p>					

 175:24 186:15 224:2 288:1 307:8 **handed** 32:17 81:15 150:19 186:10 187:5 191:23 205:14 289:19 **handing** 177:17 **handled** 56:22 **hands** 7:6 **handwriting** 208:14 **handwritten** 208:20 **handy** 150:22 **happen** 9:4 55:5 **happened** 8:12 11:7,8 12:2 17:16 19:8 21:5 103:6 119:4,6 133:16 239:12 258:14 276:12 302:14 303:6 **happening** 40:6 299:19 303:5 **happy** 45:4 87:17 90:10 97:14 120:1 253:11 313:23 314:1 **hard** 6:10 15:8 159:13 225:10 | 231:11,13 286:20 **harm** 12:9 14:3 14:9 26:2 272:25 **harmed** 311:10 **harms** 14:9 **harumi** 49:19 50:3 59:25 114:7 116:10 126:3 135:15 135:18 139:16 151:4,7,9 172:6,16 173:14 215:10 215:12,22 217:7 296:1 302:8,9 **hauer** 4:3 7:16 8:4 107:6 158:18 186:8 **he'll** 29:23 31:4 **head** 125:11,25 126:3,8 130:12 278:21 **header** 45:18 45:20 72:11 **hear** 7:25 9:7 10:11 15:25 16:17 18:23 20:3,6,12 25:8 31:17,19,20 39:2 46:23 56:13 81:2 93:18 113:17 124:10 156:5 175:19,20 |

259:13 290:9 310:19 314:6 314:21 heard 167:17 168:13 216:9 287:11 298:14 299:25 hearing 3:3,7,9 6:3,9 7:3,5,11 7:12 28:23 37:4 42:10 45:9 85:22 113:9 178:4 222:19,23 hearings 6:14 6:17 7:7 hearsay 26:22 27:2,10,15 29:24 30:6 55:21,22,23,24 55:25 56:1,2,8 95:14 181:9,14 182:9,11 307:15,18 heart 17:22 24:7 heavily 22:21 hedge 100:11 100:24 101:4 101:12,16 102:13,18 103:10,15 108:15 117:11 118:16 120:24 120:25 143:23 163:13,16,22 164:15,18	300:1,7 hedgeguard 144:2,4,15,24 163:24 164:1,2 164:7,8,18 299:13 hedges 143:18 299:14 300:13 hedging 101:2 103:1 107:8,10 107:14 108:3 108:10,12 109:3,5,6,10 115:14,23 116:1,6,8,12 117:18,24 118:4,5,9,13 118:19 121:4 143:21 163:12 174:3,13,15,21 297:4 298:15 298:18 299:8 299:10,15,18 299:19,21,23 300:12,19,24 held 149:14 166:6 250:6 251:5 help 28:5 42:16 43:21 51:1 53:22 71:14 99:20 226:12 helped 99:19 99:22,24 280:16,20 helpful 191:19 200:9 234:5	286:4 hereto 290:1 hey 171:23,23 215:6 228:9 hid 17:8 hide 16:18 high 283:1 288:7 highlight 45:23 248:14 highlighted 67:5 237:20,24 238:2,2 245:4 245:15 252:6 256:24 257:5 257:18 262:2 263:1 264:24 266:8,14 268:23 highlighting 238:5 highlights 262:22 263:3 highly 17:2 22:23 24:16,16 136:6 hit 300:20 hmm 195:22 198:6 211:20 218:19 hold 23:17,21 134:8 149:12 184:7 185:1,1 197:2 254:4 275:15 287:18 holding 16:11 35:2 47:4	hole 18:10 148:21 149:12 149:12,13,23 150:2,4 holert 5:5,14 5:16 10:14 28:13,15 29:23 93:11 94:9,11 94:13,23 95:17 95:25 96:2 97:9,13 99:15 102:4 103:18 104:12 106:10 107:4,7 110:1 112:19 114:10 114:12,19,24 115:3,21,24 116:10,11,20 116:22 121:10 129:14,17 131:1 146:15 174:11 217:16 217:20,22 298:11,14,17 299:25 holert's 95:10 home 243:7 homeowner 243:15 hon 2:2 honestly 171:20 209:18 237:2 honor 7:15,21 8:3,5,18,23 9:9 9:11 10:6 11:4 11:14,23 12:4
---	---	--	--

12:20 13:1	101:25 106:20	honor's 179:22	53:12 55:17
14:1,8,16,24	113:5 120:2	hope 83:14	58:14 59:21
15:3,11,13	121:7 123:11	hopefully	60:5 62:2
18:15 21:20	134:1,21 137:7	233:7	63:23 79:10
24:12 25:12,12	137:11,20	horse 92:16	80:17,20 82:9
25:23 27:3,21	150:13,21	host 42:12,14	82:18 83:2,11
28:16,20 29:10	156:4,22	232:1 307:13	83:15,23,24
30:11,22,23,23	157:12,15	hour 84:3	85:10,14,17,24
31:19 32:13	158:3 175:9,14	85:19 123:20	86:2 87:25
33:10 35:13	175:19 177:13	123:24 225:12	88:6,16 90:22
36:12,15,16	178:2,7,8	286:18	93:3,7,18 98:2
37:2 38:8,24	179:9,11,19	hours 206:10	98:5 99:7
40:5 42:11	180:19 181:11	303:13	113:3,7,12
44:5,17 45:3,4	181:21 182:7	house 243:11	114:6 123:24
45:9,12 46:12	183:1,11	277:13	134:5,7 179:11
47:1,25 48:1	184:23 185:13	housed 161:7	179:19 181:9
48:14,18 49:7	185:25 186:4	huge 9:1	182:9,21 183:1
49:9,14,22,24	186:25 187:13	hundreds 68:6	183:5,7,9
50:20 52:18,22	187:15 188:4	141:6 227:19	186:4,6,7,25
53:10,15 54:21	189:20 191:20	hurdle 297:20	187:4,13,19
55:7,17 58:14	197:13 200:6	hurley 4:9 7:13	188:2,8 189:20
58:21 59:8,19	219:6 231:8	7:14,15,16 8:2	189:23,24
62:2 65:6 66:2	233:8 239:21	8:3,4 15:1	191:15,19,22
66:22 67:18	244:14 254:9	23:19 26:16	194:6 196:1,22
70:10,11 72:23	259:8 261:6	27:3,11,25	196:24 197:1
74:17,20 76:22	264:10 269:22	28:2,6,14,16	197:12,14
79:6,10,13	272:19 280:5	28:20 29:2,4	200:6,10 205:5
81:6 82:16,18	280:13 283:21	29:10,13 30:6	205:18,20
82:23 83:5,21	285:25 286:3,6	30:9,14,20	211:8 212:23
84:9 85:10,14	286:10,15,25	31:12,14,22	212:24 213:1,3
85:23 86:2	290:7,14 299:3	32:4,13,16	219:6,9 220:5
87:25 88:16	306:3,25 307:2	33:10,15 34:15	220:24,24
91:22 92:13	307:5,17,18,20	35:13 36:12	221:3,6,11
93:3,7,10,18	308:11 311:1	38:8,24 40:5	222:7 223:3
94:16,18 95:9	313:12,19,22	44:5,11,16,22	225:6,10,15,18
95:14 98:2,17	314:7,15,23	45:3 47:24	230:16 231:7
100:17 101:21	315:10,11	48:14 49:24	231:11,14,20

232:4,8,10,11 232:25 233:3,5 233:10 234:7 234:10,11,17 234:20,21 239:21,24,25 244:12,14,15 254:4,9,10 259:8,18,20,22 260:19,20,25 261:1,4,6,13 261:14,15,16 264:6,10,14,15 269:18,21 270:1,2 271:21 271:24 272:18 272:20 273:10 275:16,25 276:19,21,24 276:25 277:24 278:5 280:4,6 280:13,15 283:20,23 285:25 286:25 287:1,2,7,9 289:19 290:7 290:10,11 292:7 306:3 307:15,17 310:22,24 311:1,3,7 313:12,17,19 313:22 314:1 314:14 315:10 315:12 hurley's 15:15 15:16,21 16:1	hybrid 3:3,6 hyde 3:25 316:3,8 hyperlink 296:10,11 hypothetical 90:4,7,13 i idea 107:25 225:5 251:15 258:17 259:1 277:10 identification 5:13,20 identified 117:18 173:11 183:2 195:16 221:8,13 227:24 237:11 257:8,11 266:8 282:17 283:6 identifies 238:25 247:10 247:13 309:17 identify 10:12 12:13 115:12 115:15 117:20 174:2,5 192:4 222:8 228:2,5 240:1,5 253:8 256:3 263:8 265:3 282:14 identifying 228:22 identity 251:16 idiots 135:23	ifinex 57:24 iii 203:5 illicit 13:4 illiquid 23:6 image 45:18 46:1,2 immediate 50:3 91:3 immediately 50:5 114:18 impact 297:18 impair 125:5 impeaching 155:13 impeachment 79:14 82:23 84:1,5,7 85:25 137:14 187:18 impermanent 23:18 24:6 115:14 116:2 119:15 120:4,5 120:10 140:18 140:20,22 141:3 165:7 174:4,15 282:8 282:16,18 implemented 144:4,6,15 implication 245:25 implies 204:19 important 12:16 18:16 107:10 221:1 223:9	imposing 315:4 impossible 123:8 163:22 inaccuracies 177:23 inappropriate 50:11 inbox 223:11 223:14,15 284:3,4,10,13 incentive 108:14,15 incident 303:1 include 6:24 118:13 199:2 259:4 278:11 279:10 296:12 included 11:1 84:6 108:23 165:14 203:2 247:24 279:6 includes 9:15 10:22 91:5,5 239:12 242:23 251:23 262:24 267:4 including 7:2,3 10:14 13:11 16:25 23:22 24:16 53:5 228:23 230:25 257:19 258:21 266:14 313:6 income 277:25 278:8 279:1,1 279:3,5,17,19
--	---	---	--

279:22,25	27:9,23 28:5	106:25 138:17	insolvent 80:16
284:23	30:13 31:4	138:18,19,20	80:21 81:3
incoming	36:24 44:21,24	164:4 166:7	82:1
185:21	45:1 48:21	167:5,19,21,22	installments
inconsistent	49:11,12 50:5	168:2,9,12	20:2
82:24	50:22 55:4,16	184:15 185:23	instance 112:7
incorrect 36:11	56:22 66:8,9	186:12 198:10	119:12 120:8
54:16 265:18	67:13 73:10	222:22 229:17	120:15 121:1
increase 52:6,7	137:19 187:23	239:12 240:10	247:25
52:7	196:21,25	281:9 289:7,12	instances
increased 50:4	221:21 226:1	296:21 297:7	251:20
54:1,4,14	231:25 232:5	299:18 302:19	institutional
120:19	232:10,24	305:1,2,3,4	125:11
increases 23:23	233:2 234:6,9	306:6,20	institutions
incur 120:22	275:17 279:19	308:16	87:7 91:5
300:23	286:23 290:8	informed	instructed
indicate 110:7	295:22 314:4	113:8 191:5	200:20
239:16 240:15	314:25	infrastructure	instruction
240:25 243:24	indisputably	302:18	179:22 200:23
250:16 251:20	16:17	initial 229:10	287:2
258:1,6,9,11	individual	initially 236:4	insurance
258:14 262:16	127:8 281:17	253:19	304:3,6,8
263:3 298:6	292:4 300:13	injunction 3:4	intended 39:10
indicated	312:12,23	3:10 6:3 8:18	39:11 226:10
13:21 44:24	individually	9:3,5,9 12:17	235:13 256:3
194:8 242:2	189:18	12:22,25 13:3	inter 192:25
243:23 250:14	individuals	13:7,23 14:7	interactions
284:22 300:7	127:10 213:14	14:10,17,18,25	127:5
indicates 33:4	ineptitude	16:2 26:4,14	interest 202:22
194:21 198:14	18:14	29:17,20 32:11	229:6 296:17
239:8 241:12	inflows 140:11	94:14 95:1	interested
241:15 243:4	inform 271:25	96:5 177:22	233:21,22
244:23 252:10	informal 19:21	insert 260:1	235:23 247:4
257:25 266:2	information	insight 107:18	265:10
270:3 282:2	28:23 67:14	163:20	interests 26:11
indiscernible	86:20 103:19	insolvency	internal 66:25
26:24,25 27:7	103:20 104:2	80:23 81:14	96:22 111:5

[internal - jessica]

Page 42

129:5,9,11,14 129:25 164:10 164:22 224:11 251:21 291:17 308:15 internet 69:23 93:25 251:17 308:17 interpret 50:12 50:18 interpreting 253:1,3 interrupt 46:19 55:18 56:17,20 122:15 225:6 254:7 interruption 93:25 intervals 21:4 intervened 61:9 interview 82:14 84:3,21 86:13,17 87:6 89:9,11,21 90:1,2,5 91:9 introducing 299:5 invest 34:2 242:10 invested 35:24 177:9 investing 119:15 investment 100:11,24	107:13 117:11 118:16 120:6 159:3 161:10 161:13 163:3 164:15 166:5 167:25 177:6 242:21 249:22 249:24 250:2 investments 20:10 34:7 107:8,10 108:4 109:4 162:18 164:19,22,24 165:3 investor 177:3 177:5 investors 89:21 120:21 177:2 297:21 invites 129:23 invoke 30:24 293:21 involved 6:21 36:1,4,4 61:8 63:4 101:7,8 117:19 126:8 126:14 128:1 128:10,24 138:12 149:23 149:24 161:15 172:18 176:14 226:2 256:22 involvement 127:1 ip 176:25 irregular 304:6	irreparable 12:9 14:3,8 26:2 issue 23:4 25:20 29:15 41:3 87:18 121:25 314:9 issued 57:20,23 issues 18:23 25:24 56:23 it'll 46:17 item 34:8 43:24 180:8,10 180:11,11 251:4,11 itemized 17:9 items 248:13 264:8 296:16 298:1 j j 5:3,7 257:25 january 1:22 19:5 20:17 59:17,24 65:10 65:14 68:6,16 69:4 70:7,23 71:15 74:8 105:8 109:13 109:14 139:18 179:4 185:14 185:16 186:20 186:23 192:18 194:8 195:19 198:15,17 200:24 211:21 233:25 235:11 235:17 237:23	267:9 275:4 278:25 299:17 301:4 304:12 309:14 316:25 jason 4:15,24 5:8 6:24 18:17 18:19 36:1 37:16 49:18 55:12 57:14,18 58:8,8,10,12 59:16,25 60:3 60:14 62:6,11 62:13 69:7 70:23 71:10,25 72:18 76:10 105:25 108:23 108:23 112:20 113:2 127:2 138:17 139:20 151:14 157:19 157:24 158:7 168:13 171:22 176:8,11 186:5 192:14 198:6 201:13,24 215:5 229:24 243:20 287:23 288:25 311:6 jason's 78:2 jeremy 36:24 jersey 86:8,9 86:18 87:2 88:3,4 jessica 4:12 113:17,22 232:3
--	---	--	--

jessica's	k	25:18 36:1,4,7	123:2,3,10
231:24	k 115:2	36:9 37:12,16	127:9,16,20
john 108:7,17	kaiser 249:5,11	37:23,25 38:14	128:2,5,8,11
108:23 117:21	karen 2:5	38:16,17,22	129:6,9,18,25
joined 18:16	124:13 315:9	39:5,7,10,10	130:10,13,14
joint 26:17	keen 135:22	39:14,15,16,19	130:17,18,22
28:8 229:24	keep 40:24	39:23 40:3,7,7	130:23 131:1
jointly 6:9 25:6	76:7,9 81:15	40:15,20,22,24	131:18,20,22
25:8	81:18 110:24	41:3,7,8,10,18	132:6,8 133:16
jude 208:23	169:6 187:9	42:1,4,17	133:23 135:23
jude's 209:9	233:6	43:25 45:15,17	136:2,5,6,7,13
judge 2:3 6:4	keeping 41:3	47:13,18,22	136:16,18,23
16:15 38:10	209:23	48:7 49:4 51:8	136:25 138:14
42:5 43:15	kentucky 87:7	51:9,11,15,15	138:16,21
46:2 50:14	87:9	51:17,19,20,24	140:1 141:12
52:24 54:22,23	kept 11:11	51:24 52:10,11	141:14 145:4
54:24,25 56:19	12:1 223:10	53:8,24,24	146:5 147:22
59:12 66:10	303:19	54:6,11,11	148:4 152:2,10
70:17 73:22	key 16:10 25:5	58:2 61:4,6,11	158:11 160:5
74:1 75:11,17	182:18 206:19	61:15,20 62:7	161:8,25 162:6
77:13 83:9,16	206:20 207:1,2	62:15,16 63:4	162:8 166:7,9
92:17 93:23	240:22 271:18	68:6,8,17 69:4	168:9,24 169:2
113:16 123:14	272:3	70:4 75:21,22	169:6,20 170:2
137:22 158:23	keyfi 4:15 6:18	76:5 97:2 98:8	170:12 174:4
169:22 175:23	6:25 11:25	98:14 99:2,17	174:16,22
176:5,7 206:4	12:1,23,24	104:4,13,14	176:23,24,25
287:18	15:22,23 16:4	106:16 107:15	177:1,4,7,9
judgment 8:21	16:10,25 17:3	107:17,19,22	181:4 182:5
8:22 14:6,12	17:18 18:1,4,8	108:6,11,13,20	188:17,18,21
july 19:2	18:10,18,19	111:6,8 112:5	188:24,25,25
jump 115:8	19:3,12,16,16	112:6,8,12,14	189:8,9,13,13
158:19	19:18,23,23,24	112:18 114:22	189:18,25,25
jumped 74:1	20:1,3,7,9,14	115:15 116:2,8	190:5,6,7,8,10
june 23:11	20:21,24,25	116:9,13,13	190:12,13,15
91:1,13 92:4	21:2 23:1,9,9	117:22 118:4	190:19 191:1,6
justified 13:11	23:11,20,25	118:18 119:3,9	192:1,16
	24:1,3,14	121:17 122:5	193:13 194:13

[keyfi - know]

Page 44

194:25 195:7	312:13,13	69:25 70:7,9	124:5 131:9,14
195:11 196:5,9	keyfi's 17:1	71:15 91:19,22	132:3,11
198:7,25 199:6	18:3 20:5,10	122:7,10	133:13 135:7
199:7,7,8,11	20:19 22:22	145:24 146:4	136:20 140:18
199:14,20,23	58:5 62:21	147:18 150:2	141:9,19 144:6
199:24 201:17	96:23,25 104:2	212:12 213:19	144:6,15
201:19,20,22	104:16,17	251:17 303:8	145:13 146:24
202:15,23	110:20 122:6	know 9:4,8	147:18 150:6
203:7,14,16,20	130:9 132:17	12:1 13:2 15:5	150:21 151:11
210:23 211:13	132:20,23	16:20 17:9	152:5 153:25
212:2,2,3	133:1,7,11,15	18:5,7 26:3	154:5,13,22
218:18 224:5,7	133:21 134:24	36:3 39:6 42:2	155:10,11,16
224:8,8,10,11	135:1 144:2,4	43:6 44:12,14	156:12,16
224:15,17,18	144:16,25	44:14 45:3	157:20 158:22
224:20 225:1	163:13,15	59:9 60:11	159:7,19 160:7
227:7 230:23	166:13,17	61:17 64:8,11	162:7 167:5
239:18 240:18	172:25 173:1	64:24 66:1	169:19 170:23
240:19 243:25	173:18 190:22	67:7 68:21	171:24,25
244:1,2,5,6	190:23 218:4,7	69:6 70:17	172:2 185:10
247:25 251:5,6	218:8 300:1	72:21 74:3	202:4 215:2,8
252:18,19,22	309:18 310:4	75:7,23 76:6	215:18 218:23
253:15 254:25	keyfi.io. 201:24	78:18,24 79:4	219:4 221:25
255:4,12,16,17	keys 8:7 9:20	80:2 81:11,20	226:18 234:18
265:2,2 279:13	11:2,6,11,16	82:3 84:12	236:18 239:21
279:17,23	25:6 182:17	90:16 91:6,10	251:16 255:16
280:1 288:9,9	206:12,16	97:9,13,16	262:13 263:3,7
289:9,9,25	207:15 210:18	99:10,11,12,12	263:23 274:6
290:4,13,20,20	262:9 263:16	101:14,20,21	274:10 275:12
291:17,19,21	270:21,24	102:14,20	276:10,15,16
292:2 294:2,4	kind 12:17	104:18 105:6	277:12,14
294:6,7,21	107:25 135:24	109:9 110:22	278:21 280:9
296:18,24,25	135:25 222:8	111:1,17	280:10 282:11
297:5,6,10,21	229:7	113:24 115:9	284:20 285:5
299:16 300:20	kinds 281:11	118:10,24,24	285:18,18,20
300:20 304:14	kitchen 37:15	121:3,4,24	286:3 288:20
307:21,22	knew 11:17	122:1,6,8	292:21 297:1
311:25 312:1	35:17 58:8	123:8,8,8	298:7,7,8

299:2,9 300:21 300:21 303:6,9 303:11 304:7 305:15 307:2 314:11 knowing 69:20 72:18,18 297:4 300:18 knowledge 72:1 111:4 128:4,7 164:12 164:17 284:9 known 136:17 274:6 knows 12:2 27:25 66:20 krissy 77:17 78:1,5 257:6,7 257:10 krol 277:5 kyle 4:14,19 96:2 125:1 176:9	late 44:18 127:2 146:18 168:16 169:10 201:4 211:23 212:18,19 213:23 214:1 258:25 286:4 299:17 301:23 latest 70:25 71:7 launched 86:21 launder 273:23 laundered 11:21 law 40:12 249:6,11 278:3 laws 254:20 lawsuit 6:21 17:19 lawyer 42:12 43:17 lawyers 6:22 35:4 249:15 313:23 leading 32:2 100:6 148:18 168:3 306:3 leads 23:10 leaning 55:5 learn 266:16 266:19,20 learned 23:6,8 leave 92:21 120:3 209:20 301:24	leaving 130:10 led 107:25 110:18 ledanski 3:25 316:3,8 ledger 42:7,9 42:19,20,22,24 42:25 44:9 45:2 51:4,6 ledgers 97:21 left 16:21,24 18:10 92:10 94:20 104:23 186:15 209:7 260:14 284:1 304:14,15 legal 151:16 249:2,19 302:1 310:1 316:20 lend 51:8 lending 125:11 lengthy 102:14 lent 51:9 leon 203:8,23 letter 172:25 202:13 203:1,9 203:12,12 205:7 209:1 218:2 266:1 271:4 letterhead 208:23 letters 206:20 206:23 level 182:19 224:7 288:7	levels 109:8 leveraging 24:16 liabilities 23:7 82:2 149:15 156:2 liable 23:17,21 liar 60:21,24 license 301:25 lie 80:12 85:8 87:23 89:5,17 89:19 91:19 lied 92:20 lies 18:13 lieu 202:14 likelihood 26:1 likely 26:1 154:8 limit 314:24 limitation 23:22 limited 1:12 3:1 4:4 6:16,24 31:24 32:1,7 36:13 97:15 103:20 125:15 188:12,15 193:5 202:20 290:17,25 291:6 299:4 limits 315:4 line 7:8 37:11 43:22,24,24 45:14 46:7 47:8 49:3 71:2 71:7 77:22 97:25 98:7,11
l			
label 45:8 labeled 192:22 233:6,20,21,23 238:9,16,24 242:23 246:17 257:10 lack 47:24 laid 44:8 67:16 80:22 108:13 large 42:6 231:5 241:6 largest 64:4 165:6 190:10			

98:16 99:1	liquidating	73:11 151:18	194:5 224:23
113:9,15 114:5	122:23	155:19 159:13	225:7 283:2
114:19 115:11	liquidation	195:20 225:10	300:7
116:5 124:5	297:2 302:12	231:14 256:19	longer 151:7
130:23 131:1,3	302:15 304:4	258:25 260:3	169:11 263:22
131:7 136:1,3	304:10	266:22 268:12	276:20
137:25 142:17	liquidity 89:1	269:4 276:1	look 10:20
144:21 156:18	91:3,5,11 92:6	303:16 314:11	26:10 37:7
156:25 158:4,6	140:23 281:21	live 28:14,17	42:20 43:2,13
158:9 168:13	300:13,19	179:21 314:2,4	45:14 47:6,16
171:4 172:11	305:23	314:7	57:1 63:5,5
172:23,23	list 26:18 44:18	llc 1:8 188:17	67:8,9 72:2
174:1 175:17	84:6 134:6	198:7 202:15	74:7,24 81:24
213:10 215:17	180:7 185:5	202:23 265:2	111:17 134:12
226:1 242:5	248:13 281:11	292:2	161:24 162:13
243:6 246:8	296:11 297:18	llp 4:3	182:24 193:2
251:10 256:13	listed 45:6,7	loan 241:15,23	199:18 205:16
264:8 272:21	104:6 238:25	243:21 278:23	206:2 219:17
273:12 282:11	263:21 265:23	279:2	238:8 242:22
311:15	267:7	lobbied 24:18	256:11 261:17
lines 77:7,8,10	listen 6:19 7:22	272:23 303:25	295:21 305:21
77:24 98:25	113:9,12 205:1	304:2	looked 34:25
138:10 141:25	221:4 314:16	lobbying 24:21	42:22,24,25
142:15 155:9	listening	304:11,12,15	43:3,11 58:10
265:1	113:11,15	304:15	64:25 65:4
link 55:13,14	listing 180:13	located 219:14	82:7 84:16
57:6 104:6,9	lists 79:12	location 9:2	87:21 102:21
179:18 182:3	245:14	309:18	146:2 223:24
306:13	literal 63:21	locations	270:18
linked 162:23	literally 48:18	228:24	looking 26:17
208:6,9	253:3	lock 27:25	27:20 28:14
links 17:12	litigate 249:19	logged 42:21	49:17 59:8
83:9	litigation 10:19	306:13	63:8 72:12,12
liquidate 121:2	12:6 249:21	logic 226:4	77:1 107:24
liquidated	272:11 309:22	long 24:2 84:21	115:21 135:19
302:23 303:8	little 21:3	85:18 99:18	135:20 139:18
303:15,18,23	35:11 43:14,15	101:6 123:19	141:25 155:9

174:10 180:14 182:24 211:10 220:6 223:18 226:15 227:9 244:10 247:16 251:3 255:5 260:21 262:15 264:6 272:16 288:13 291:15 293:13 looks 28:7 73:8 243:10 260:3,9 266:11 293:11 loose 281:17 loss 23:18 24:6 96:12,20 108:14 115:14 116:2 119:15 120:4,5,10,13 120:22 140:18 140:21,22 141:3 163:9 165:7 174:4,15 224:12 282:3,8 282:16,18 291:18 303:1 312:10,12,19 losses 23:23 79:3 80:6 108:14 109:7 123:4 140:23 307:22 lost 54:23 80:8 86:22 151:18 294:21 lot 145:17	loud 293:17 lower 303:18 303:22,24 lp 281:20 lukasz 277:4 luna 80:7,9 89:9 lunch 123:19 123:20 m mac 284:12 maciej 277:5 made 6:9,22 13:25 26:19 28:22 29:19 58:12 59:4 68:10 80:10 82:1 84:11 90:14 91:19 106:16 115:23 116:6 126:13 136:17 156:10 156:13 157:6 160:6 161:25 174:12 179:1 180:3,13 181:3 210:18 230:23 232:1 246:11 254:19 255:19 266:13,17 274:24 288:20 297:25 307:12 307:25 309:3 madison 4:16 mail 191:9,24 201:12,16,22 201:25 202:12	202:17,18 203:6 214:21 214:24 216:6 218:19 223:4 223:12,14,15 227:25 228:2,8 228:13 284:12 mails 214:25 215:3,4,11,19 215:20,20,23 222:15 223:4,5 223:6,8 main 284:14 mainco 300:9 maintain 190:15,19 208:15 maintained 190:13 208:13 271:3 majority 39:23 132:15 make 6:13 12:12,12 15:6 23:20 42:11 46:1 48:25 60:2 84:23 89:3 90:2,5,8 90:17,18,20 110:23 118:3 118:17 120:9 187:22 188:10 206:15 212:5 223:9 232:22 247:9 252:12 263:16 270:20 281:8 291:9	292:1 295:17 308:15,24 309:5 makes 12:18 making 11:12 20:9 28:24 74:25 75:17 84:20 89:24 91:7,13 120:7 157:1 165:10 168:12 174:14 220:18 225:11 300:21 malicious 302:16 303:7 man 137:18 231:21 232:2 234:6,9,18 260:12,15 manage 19:24 121:18 122:6 123:5 182:5 189:25 289:3 managed 122:11 126:11 189:9,12 management 69:22 96:22 108:6,7,9,23 117:17,19,22 118:12 190:22 190:23 manager 203:8 203:23 managers 202:14 203:10
---	---	---	--

[managing - matches]

Page 48

managing 17:24 103:4 119:3 121:23 121:24,25 140:1 190:5,12 289:8 manner 150:4 203:24 mannon 4:12 march 10:24 11:16 19:5,9 23:9,11 98:22 125:23 151:22 160:7 172:24 173:5 189:10 191:6,9,24 201:4,5,14 202:2,9 203:12 204:16 205:7 210:14 214:12 218:1 263:15 266:1,10,12 267:19 270:16 270:18 271:4 292:10 295:18 298:22 margins 297:20 mark 261:2 marked 32:18 36:20 66:4,5 79:11 97:10 119:20 134:4 135:8 137:10 139:9 150:19 177:17 191:23 255:17 288:2	market 79:1,25 80:5 120:6 303:21 marketplace 180:8 markets 89:10 91:10 martin 2:2 mashinsky 57:21 mashinsky 5:4 5:15 10:5,8,11 17:2 18:12 29:8 30:21,21 31:3,11,13,15 31:23 32:17,21 33:16,22 34:14 34:18,20,25 35:12,17 36:20 37:7,11 38:1,3 38:14,22 39:5 39:12,18,22 40:4 41:7,22 42:16,18 43:5 43:24 45:14,24 46:9,15 47:4 47:16,20 49:3 49:16 50:1,9 51:1,10,14,23 52:9 53:4,17 54:5,17 55:11 56:22 58:1 59:3,15,24 60:8,12,14 61:4,19 62:6,9 62:14,21 63:11 63:14,21 64:4	64:16,22 65:9 65:24 66:12,24 67:20 68:5,6 68:16 69:1,7 70:4,15,22 71:6,17 72:3 73:3,14 74:7 74:14,23 75:15 75:20 76:14 77:2,4,15,20 77:23 78:13,25 79:18 80:10,15 81:2,10 82:5 83:20,25 84:3 84:10,15,23 85:3,8,12 86:7 87:13,21 88:5 88:10,19 89:5 89:7,18,20 90:3,6,8,14 91:1,17,24 92:2,12,20,24 93:9 94:20 105:19 106:1,2 106:5,6,9,11 106:13,15,19 114:8,13,20 115:22 116:10 128:1,4,7,10 128:24 129:3 130:5 132:23 133:7 134:24 135:1 136:10 136:12,13,25 138:18,20 139:3,3,6 141:11 143:16	145:2,4,9 146:13 147:13 147:16 148:9 152:5,10,15,19 156:10,13,25 157:6,19,23 158:6 166:22 167:12,16,24 168:7,19,23 169:2,6,14 170:12,16 171:9,11 172:13,18 173:13 174:12 177:5 212:10 212:13,13,16 213:11,18,19 213:21 214:10 214:15,15,20 215:3 216:12 216:14,18,24 217:1,6,9,17 218:11,14,21 219:2 220:9,19 221:4 227:16 245:23 257:6,8 257:10 288:8 289:5 291:6 303:5 mashinsky's 79:7 master 207:20 207:23,25 match 149:15 156:1 matches 134:20
---	---	---	---

material 85:15 85:17,25 223:18 materially 312:1,6 math 264:12 matter 1:6 18:16 26:12 30:11 56:11 78:24 95:11 96:3 134:19 135:24 181:17 230:20 mean 38:16 66:16 75:6 143:2 153:21 153:22 162:20 162:21 167:20 173:3 180:7 182:13 189:12 207:23 236:14 262:13 264:14 300:21 312:13 meaning 22:16 70:2 149:20 203:20 206:16 means 13:4 36:3 39:6 48:25 57:11 60:11 76:6 78:18 99:11 163:21 182:18 meant 180:7 221:9 226:8 255:13,18 283:5	mediation 275:7 meet 26:7 meeting 105:8 105:15,19 109:15,17,20 109:22 118:25 129:6,23 202:14 meetings 58:1 58:4,7 108:22 108:23,24,25 109:2,12,13 110:17,19,19 111:1 117:25 118:2,11 119:1 119:2,7,9 128:10 129:2,5 129:11,14,18 129:24 130:1 133:16 145:10 152:9,18 members 39:16 251:21 memorandum 197:4,8 memorialize 220:18 memorializes 219:20 220:8 221:13 memorized 210:4,5 memory 56:25 79:4 mention 116:6 174:14	mentioned 16:1 108:17 222:14 257:7 283:25 302:12 mentions 115:23 174:12 merely 14:13 merit 29:20 merits 9:10,13 12:4,8 26:1,9 message 10:17 115:19 135:19 136:1 139:23 140:3,5 151:17 151:19,19,20 151:24 152:2 174:8 218:20 219:11,19,20 220:7,8 222:8 messages 139:19 151:22 173:13 219:14 220:7 222:3 met 127:2 183:2 251:17 metamask 210:6 methods 18:9 mg 1:3,4 3:1 middle 179:5 226:17 million 11:17 11:18,20 16:4 16:11 18:2 19:16 20:1 21:3 22:25 23:13 24:22	25:18,20 47:13 47:15,17,20,21 47:22 48:7 49:4 50:5 53:19 57:4 98:15 99:3 106:16,22 131:3,5,8,11 139:22 153:15 153:20 154:2,7 154:9,19,21 155:11,18,20 155:22 159:7 173:1,8 204:4 204:6,9,10,18 205:9 218:5,15 218:15,22 219:21,24 220:10,12,19 221:14 242:15 242:18 245:8 245:11 252:4,8 252:21 253:6 256:20 257:20 262:4 264:2,23 266:18,22 267:15 268:8,9 268:10 269:3 270:9 271:10 271:13,19 272:4 273:16 274:1 275:8 276:2 277:1,16 285:6 291:21 292:3 296:8 302:22 304:17 311:8,19,21
---	--	--	--

[millions - moved]

Page 50

millions 8:8,10 10:9,9 17:17 68:7 75:6 140:6 141:6 mine 196:24 mineola 316:23 minimal 89:23 minute 7:18 55:18 59:9 65:7 83:14 102:7 157:13 175:10 178:17 225:13,14 227:15 311:9 minutes 24:10 83:11 88:20,22 88:24 89:8 175:12 265:15 276:21 286:9 286:16 mirrored 138:19 mis 265:21 misleading 20:11 121:13 misled 92:8,25 mismatch 149:14 misrepresent 104:25 105:4 106:21 306:19 misrepresent... 104:24 misrepresented 20:14 104:13 missing 223:13 281:23 282:3,5	282:7,16,25 284:5,15 misspoke 290:22 mistake 23:20 190:2 misundersta... 170:23 misunderstood 183:10 mitch 4:9 7:15 8:4 186:7 260:18 mitigation 122:4,22 mixer 273:19 mm 195:22 198:6 211:20 218:19 modification 196:14,16 200:12,15 modified 44:23 module 304:7 moment 54:17 54:18 81:7 93:15,24 103:13,14,17 106:20 138:7 149:13 181:11 197:12 201:16 223:23 283:20 moments 85:21 monday 210:11 monetized 57:19	money 39:15 115:1 154:18 154:19 155:17 217:19 272:9 276:13 300:22 310:8 monies 276:14 monitor 41:19 62:21 107:22 111:6,6,7,14 111:18 144:2,4 144:24 283:12 305:13,16 monitoring 144:16 mono 206:21 month 22:15 51:18,18 195:12,14 270:23 294:12 monthly 294:16 months 11:14 19:14 20:17 21:4 22:21,24 78:10 86:16,25 87:6 100:4,5,8 110:22 119:7 182:16 195:20 205:8 210:13 212:20 223:13 223:16 246:3,6 248:23 262:6 265:23 270:13 270:16 273:24 284:5,8,15	morning 6:2 7:15 15:3 16:1 18:21 31:15,16 34:20,21 96:2 125:9 286:11 286:14 296:9 313:18 314:8 314:22 315:8 motion 3:3,9 12:5 13:3,8,25 16:2 17:6 25:25 26:13 29:14,20 32:11 94:14 95:1,11 96:4 102:23 177:11,21 mou 19:20 193:23,25 194:5 mouth 139:3,6 movant 13:5 14:10,12,14 move 46:7 48:15 77:12,16 84:8 85:5 99:14 136:5 138:25 172:22 175:11 178:3 178:11 179:9 181:7 182:7 234:7 238:16 260:13,22 298:9 301:21 301:21 302:3 302:10 moved 24:14 122:23 159:15
---	---	---	--

[moved - nft]

Page 51

<p>189:20 272:1 309:21 movement 102:18 103:15 120:23 121:1 126:12,14 306:1 movements 100:12,25 101:5,17 102:13 103:10 107:23 108:10 117:12 143:22 300:12 moving 20:16 135:23 136:2 181:21 213:24 216:20 225:11 multi 201:11 multiple 183:25 208:8 mute 55:1 124:5 muted 7:8 55:2 137:22,25 175:18</p>	<p>names 115:20 117:14 174:10 305:5 narration 48:15 narrative 16:6 nature 167:5 navigate 97:14 183:24 near 88:20 89:8,17 187:9 nearby 314:2,4 314:8 nearly 17:11 17:24 268:10 269:3 275:2 necessarily 189:17 218:18 275:19 312:13 necessary 8:19 8:23 12:24 140:14 need 28:3 42:10 57:17 77:15 89:3 91:11 97:9,14 112:6,8 164:5 169:8 188:2 234:4 253:7 286:5 289:18 301:16 307:12 314:15 needed 140:15 288:20 296:21 297:8 299:14 302:3</p>	<p>needs 91:4 206:23 negative 108:14 279:22 negatively 297:18 negotiate 99:19,20,23 negotiated 22:21 36:7 negotiating 37:23 111:20 negotiations 20:17 41:15,16 neighboring 302:3 neither 26:25 net 43:25 45:15 45:16 46:6 264:8 296:18 302:21 network 1:8,12 3:1 4:4 6:15,24 31:24 32:1,7 53:5 59:16 97:15 125:15 177:7 188:12 188:14,15 193:5 198:25 199:16,23 202:19 290:13 290:17,21,25 291:6 networking 73:7 never 13:4 16:18 17:8</p>	<p>21:5 23:24 42:22,25 48:16 65:4 68:12 69:10 82:19 88:4 110:21 111:4,4 135:22 173:7 189:15 219:23 220:7 224:17 226:9 226:19,25 227:3,22,25 251:17 288:24 295:9 300:8 new 1:2,20 4:7 4:17 17:20 19:13 77:16 86:8,9,9,18 87:2 88:3,4,9 88:10,11,14 235:8 278:3 301:21,24 302:2 nft 17:5 23:4 24:15 63:18,18 63:20,22 65:10 72:2 73:5 75:8 145:13,15,16 145:19 147:2 147:18 148:2 148:15 152:11 152:14,23 170:1 173:20 180:10,12,13 180:16 185:21 227:15 233:23 240:13 252:15 253:12 255:1</p>
n			
<p>n 4:1 5:1,2 6:1 316:1 name 96:2 125:1 176:10 176:20 198:14 206:4 249:10 250:6,10,12 named 224:21 277:4</p>			

255:18,24 256:3 257:9 267:6,7 268:13 268:15 301:1 306:9 nft's 145:21 nfts 16:19,23 17:7 25:17,17 34:5,9,11,12 63:10,11,19 64:3,12,13 65:14 69:9,14 69:16,17,24 70:3 71:25 72:5,18 75:9,9 75:18,21,23,24 75:25 76:1,3,8 76:10,12,13,17 76:20 77:16,17 78:1,7 147:10 147:14,17,21 152:6,16,20 170:9,16 185:5 185:6,7 227:17 227:19,25 228:3,5,9 229:5 239:18 240:1,4,5,15 241:1,4,5 253:13 255:2 255:10,14,22 256:4,12,14,15 256:22 257:17 258:1,6,12,15 258:19 259:2 267:15,19,23 268:3,5,9,16	268:19,20 nifty 249:23 250:5 nifty's 249:24 250:2 nine 265:23 273:24 313:20 314:21 315:8 nolan 5:8 10:14 60:16,18 60:21,24 61:13 61:16,23 115:23 124:12 124:18,20,22 124:24 125:19 134:23 135:11 136:1 138:4 140:18 146:24 150:19 152:9 153:1 154:23 155:16 158:15 158:19 159:1 169:25 170:19 172:5,7,15,17 173:15,16 174:12,14 215:10,22 216:6 217:7,12 nolan's 61:24 non 14:12 34:4 48:15 67:11,24 184:3,18 269:6 nonfungible 145:16 nonpayment 293:20	nonresponsive 189:21 noon 230:5 normand 309:25 note 6:14 137:18 168:12 281:23 282:25 283:17 noted 95:13 238:20 notepad 209:3 209:9 notes 105:15 105:17 106:15 109:14 notice 271:17 271:22 272:2 notified 82:19 notwithstand... 79:1,25 80:5 291:18 november 49:4 192:3,5 197:22 210:21 211:23 212:18,19 214:3 248:21 275:4 284:16 297:2 302:12 302:15 nrts 184:14 nuke 37:22 49:20 53:5 177:7 number 30:7 52:2 57:18 98:15 99:12,13	101:20 112:5,5 112:17 131:12 158:4 159:8,19 200:7 221:19 221:22,23 237:5 239:3 244:4 248:5 251:20 263:19 267:24 268:6 268:14 281:20 282:16 296:23 297:3,20 300:18 303:15 numbered 8:11 198:11 numbers 21:17 28:4 48:11,11 67:10 187:10 206:20,23 224:1 260:22 260:23 numeric 206:21 numerous 17:5 294:16 299:12 ny 1:20 4:7,17 316:23 o o 2:1 6:1 316:1 o'clock 286:21 286:22 313:21 314:21 315:9 oath 62:19 83:20 214:7 216:2,2 225:17 226:22 273:13 282:23 312:4,8
---	---	---	---

object 27:15 44:5,6 45:5 48:14 66:2 307:18 objected 26:21 27:10 28:19 objection 26:19 27:12 28:10 29:1,5,7 29:7,9,18,21 29:22,24,24,25 30:6,17 32:2 35:13 36:12 37:4 38:24 40:5 45:11 47:24 49:12,12 49:24 53:12 55:21,22,23,24 55:25 56:1,2,6 56:7,8,9 58:14 58:24,25 59:21 60:5 62:2 63:23 79:10 80:17,19,20 82:9,18,22 83:3,25 85:10 85:15 87:25 88:6,16 90:22 92:13,14 93:3 95:12 96:13 98:2 99:7 105:21 110:11 112:22 114:23 121:20 134:16 134:17,18 141:16 143:6 148:22 149:1	156:4,6,7 168:3 171:12 171:17 178:4 179:12 180:3 181:9,13,19 182:9 183:4,19 187:20,23 194:2 223:1 259:12,14,15 271:20,23 277:22 278:2 290:7,11 306:3 307:14,15,15 307:16,19 308:20 309:7,9 objections 7:25 8:1 27:1,18 30:1 48:21 56:12 58:23 95:16 134:11 134:14,15 182:23 obligated 40:20 observing 7:3 obtain 291:19 obtaining 34:8 obviously 6:4 45:8 89:12 92:5 187:15,21 259:4 262:24 264:14 287:11 occasions 118:17 214:16 214:17 237:15 occur 22:15 140:22,24	293:17 occurred 21:1 103:3 125:8 142:21 147:24 148:6,13 168:14 184:20 185:15,16 263:21 273:24 311:24 occurring 22:16 occurs 120:10 293:21 october 19:19 19:25 47:21 48:7 119:13 193:8 195:17 195:19 212:18 213:23 214:1,1 274:24 276:5 277:17 284:16 301:24 odd 171:25 ofac 11:23 273:22 274:8 301:11,12 ofb1 70:5 offer 10:14 27:3 33:10 37:2 45:10 49:22 53:10 59:19 78:13 120:1 offered 180:2,3 offering 28:21 30:11,18 87:15 181:16	offhand 104:18 129:22 151:11 154:5,22 157:4 159:19 office 42:12 259:18 officer 90:21 oh 43:21 46:3,3 46:3,3,15 54:24 59:5 117:3,25 151:6 189:5 213:1 232:8 252:16 269:23 286:25 okay 7:19 9:12 15:19 16:13 22:11 25:8 26:4 28:12,18 29:2 30:2,25 31:17,19 32:6 38:12,20 39:7 40:15 46:4,25 52:20 53:22 60:13 66:20 69:4 71:17 93:16 96:19 97:4,24 98:12 98:23 99:14,21 100:9 101:3,11 101:19,25 102:7 103:8 104:21 105:7,9 112:24 113:18 114:5 115:24 117:5,8 118:21 123:25 124:3 129:24 130:23
--	---	---	--

[okay - ones]

Page 54

132:6 134:1,11	201:19,22,25	238:24 239:8	280:12 281:10
134:12 135:8	202:4,17	239:24 240:10	282:7,22
136:22 137:10	203:16,19	240:25 241:12	283:10 284:15
138:25 139:9	204:15 205:3	241:20 242:4	284:21 285:7,8
139:17 140:3	205:16 206:3,7	242:22 243:1,3	285:18,24,25
141:11,24	206:8,9,15	243:17 244:2,9	286:15,22,23
143:16 145:2	207:1,19 208:2	244:13,21	286:24 287:19
154:14 157:22	208:18,19	245:1,7,17,20	287:21 289:11
158:9,17	210:7,20 212:7	245:21 246:2	289:16,20,23
159:20 160:25	213:4,9,25	246:10,17	291:12,14,16
160:25 161:9	215:8,13,14,16	247:8 248:2,3	292:8,11,20,20
164:17 165:1	215:17,17	248:16,23	293:13,15
165:14,22	216:5,13	249:1,15,22	294:14,20
166:4,9,12,17	218:10 219:14	250:2 251:20	295:4,19,21,22
167:12 171:4,6	219:17,25	253:8,18	296:7 301:9,14
171:8,9,20	220:13,17,23	254:12 255:9	301:21 302:11
172:1,23 173:8	221:3,7,20	256:11,12,12	304:17 306:23
173:16,25	222:14,17,21	256:19 257:5	309:24 310:1
176:3 178:14	223:14,22,22	257:11,17,23	310:20,25
180:19,22	223:25 224:4	258:24 259:16	311:12,14,15
184:6,10	224:10,15	260:5,9,24	312:4,10,14,16
186:25 187:11	225:14,15	261:9,15,20,22	313:1,4,9,14
187:12,24	226:25 228:12	262:1,17	314:19 315:2,5
188:2,9,14,15	228:15,19	263:14,20,24	old 19:21
188:16,25	229:10,16,19	264:16,21	289:16,17
189:1,8,23	230:4,9,18	265:22 266:12	316:21
191:15,19	231:3,6,8,11	266:25 267:6	oldest 184:19
192:7,13,16,21	231:14,16,20	267:11 268:25	onboarding
193:13,17,21	232:2,8,12,17	269:2,6,12,13	36:1
194:7,11,18,21	232:21 233:15	269:20 270:1,7	once 72:17
194:25 195:6,9	233:20,25	270:21 271:2,7	118:22,22,23
196:8,20 197:7	234:4,7,10,16	271:12 272:13	213:23 214:21
197:11,16,21	234:20,24,25	272:21 273:13	291:20
198:2,9,13,14	235:6,17,21	273:16 275:16	ones 11:16
198:19 199:10	236:3,18,21	276:24 277:7	129:25 173:20
200:14,18,23	237:4,10,10,17	278:22 279:1	245:5,15
201:10,11,16	237:23 238:8	279:13 280:3	252:19 255:17

257:2,18 268:23 284:13 online 283:14 open 21:14 22:7 113:15,25 119:14 138:1,9 178:20,21 197:4 303:20 303:21 opened 22:4 70:20 187:25 opening 7:18 7:23 8:2 15:5 15:21 16:1 openly 114:25 217:17 opensea 179:17 180:8 operating 210:6 operational 190:13,15,19 operations 303:21 opinion 51:2,3 51:5 opportunity 26:9 83:23 179:24 298:25 opposed 15:4 51:7 150:9 282:17 opposition 177:11,21 options 300:15 oral 170:11,15	order 25:25 26:18 28:8 95:13 164:9 200:19 205:12 205:21 227:12 228:18 229:16 229:21,25 259:10,10 261:11 270:23 296:21 302:2 309:2 ordered 16:15 86:8 87:7 205:14 309:13 organization 311:24 organizational 16:7 organized 259:10 origin 75:23 original 45:5 84:6 233:11 235:13 originally 182:14,22 250:8 254:13 originals 308:25 ought 24:9 outpacing 140:11 output 226:10 outside 15:25 30:21 90:11 107:18 111:8	overrule 29:24 overruled 29:9 30:1,13 32:3 36:14,14 39:1 40:8 45:11 48:3 49:13 55:22,23,24,25 56:1,2,3,10,15 56:15,16 58:16 58:25 60:6 80:25 82:10 86:4 90:23 95:16 99:8 105:22 110:12 112:23 121:21 134:14,16,18 141:17 143:7 149:2 156:8 171:18 183:5 183:19 194:3 223:2 271:23 277:23 278:4,4 overruling 29:21,22 oversaw 127:23 overview 57:6 overwhelmin... 9:14 owed 23:3 24:1 68:13 147:21 149:15 152:2 170:2 173:2,24 210:24 211:14 249:10 296:17 owes 17:20	own 8:9 16:7 18:14 24:3 41:4 73:15 122:3,11 190:8 239:14 244:2 260:1 264:12 279:23 280:1 owned 39:23 199:12 202:19 237:13 238:21 250:9 257:10 258:3 276:2 owner 188:21 190:10 244:5 257:15 owns 72:18 oxb 11:19 24:20,23 62:22 65:1,9,14 71:15,21,24 72:14,20,22 73:11,16 74:25 75:17 131:14 145:25 146:7,9 146:12,15,17 146:21 152:12 152:23 160:10 160:15 179:5 182:3,4,14 184:1,14 185:7 185:22 203:16 203:20 204:2,6 204:8 205:8,12 207:19 208:2,5 208:12,13 209:22 236:5 236:10
--	--	---	---

p	179:5 183:24	pair 120:8	297:15
p 4:1,1 6:1	183:24 184:3,8	pairs 120:8,13	paragraphs
p&l 224:18	184:8,12,13,17	paper 208:14	33:23,25 35:9
225:1,3 226:9	184:19,25	208:17,20,22	35:12 95:15
226:10,12,16	185:4,5,20	246:12,14	230:17
227:6,13,14	189:3 193:10	252:12 254:14	parameters
294:24 296:25	193:16 197:25	papers 46:21	130:21 141:8
297:5,6 300:20	198:1,9,19,19	paperwork	165:2,4
p.a. 4:14	200:3,5 201:11	189:15	pardon 307:9
p.m. 37:8	201:12 202:1	paragraph	park 4:5
53:17 228:21	205:22,23	22:12 57:16	part 16:14
packet 46:17	212:22 213:2,4	96:11 100:9,18	17:25 36:6
page 5:13,20	213:9 215:15	105:11,13	37:22 120:18
21:15,16,18,20	225:23 230:10	116:25 117:7	127:18,20
21:21 22:1,8,9	244:9 251:9	119:12 189:2,3	143:14 148:3
22:10,12 32:21	272:14 282:10	189:3,4,8	148:24 149:7
33:1 47:6,7	282:15 288:12	191:4,9 192:3	188:21 229:7
53:6 67:4,4,6	291:13 292:9	192:6,10,11,22	235:7 236:15
67:10,14 68:3	293:1,5,11,13	193:17 194:11	272:24 277:12
73:10,10 75:15	295:21 311:15	194:13,18,21	294:24
77:1 79:19,19	312:14	196:9,13,14	partial 189:17
79:21 81:15,19	pages 67:11	197:9,22	participant 7:9
81:22 102:20	70:1 81:17	198:20,20,23	participants
113:2 114:5,18	138:8	199:5,18,18	6:16,18 7:2
115:8 116:4	paid 68:17,19	200:7,11 201:8	particular
135:18 138:6,8	68:21,25 69:4	206:7 210:21	11:13 24:18
139:17 141:24	75:24,25 76:4	210:22 211:3,4	34:6 103:25
142:15 144:11	76:16,18 89:21	211:4,6,12	155:10 163:3
144:14 151:12	140:16 147:13	228:17,20	165:17 179:12
151:13,15	195:6 196:5	229:20 230:12	207:16 240:8,9
154:23 155:2,5	199:12 249:5,7	230:17 235:21	247:10 262:20
156:17,19,20	249:7,9 256:14	238:13,19	305:22 306:1,2
157:22 158:1,2	257:17 272:23	247:2,2,14,16	particularly
158:9,9 171:3	272:25 313:4	255:1,6 262:21	12:15
171:16,18	paint 15:22	265:9 283:9,11	parties 6:8,20
172:10,11,22	24:2	283:16 288:13	6:24,25 7:1,4
172:23 174:1		288:25 289:21	10:19 16:16

19:10,20 20:17 21:7 22:17 24:13 26:11 31:1 42:8 124:4 126:18 182:18 183:2 192:23,23 196:17 197:9 199:12 200:16 200:18 222:17 309:1 partner 36:5 partners 17:4 parts 35:8 95:12 285:16 party 10:19 13:3,4 63:7 113:19 128:15 192:13,16,24 party's 101:13 179:22 pass 271:4 passcode 204:3 204:8,12,22,24 206:19 password 203:7,20 205:11 270:17 path 13:13 patrick 5:5 93:11 94:11 95:25 107:4 114:10,19,24 115:21 116:10 129:14,17 131:1 146:15 174:10	pause 9:11 paused 91:16 pavan 202:6 pavon 114:11 173:14 202:18 203:6 pavon's 203:6 pay 20:25 21:2 39:19,25 40:20 40:23,25 76:10 76:12,18,20 79:18 194:25 195:10 199:20 249:8,19 250:17 251:21 289:25 292:1 paying 17:23 39:15 78:7 112:16 147:16 243:21 249:15 251:7 279:23 280:1 payment 21:1 24:1,2 68:23 195:1 210:24 211:14,25 212:2 249:9 277:13 293:18 293:19,20 payments 17:21 20:24 21:5,6 212:4 301:18 payout 147:21 151:17 152:3 170:2	payouts 17:21 22:14 23:2 230:24 pays 89:22 pdf 138:8 184:9,25 185:20 pedro 175:17 175:17 penalty 32:22 78:14 95:4 228:22 pending 60:12 275:14 people 7:2,5 10:13 11:24 38:21,23 39:10 91:6 92:6,8,21 92:25 116:6,7 117:14 120:9 120:12 128:19 277:4 280:22 288:9 296:2 299:12 303:20 304:3 perceived 169:7 173:23 percent 57:6 98:14 99:2,10 99:11 104:18 104:19,22 119:6 120:16 120:16,19,20 120:21 121:2 123:1 139:21 140:1 169:16 173:6,6,7	177:1 190:8 218:12 244:2 263:21 266:25 268:14 282:7 282:18 289:2 303:14 305:7 306:16 percentage 120:14 304:1 perception 302:20 perfect 43:22 perform 297:8 performance 101:10 144:25 305:14,15 performed 195:2,12 303:20,21 performing 150:5,9 period 19:2,6,9 19:15,25 20:16 23:10 32:6 54:13 167:6 189:13 190:12 191:1 196:3 214:14 263:14 263:25 264:21 267:14 periods 19:1 perjury 32:22 78:14 95:4 228:23 permanent 282:3
--	---	---	--

[permission - please]

Page 58

permission 42:11 69:8,10 76:7,9 94:16 231:21 291:23 permit 48:21 58:23 65:20 180:4 231:22 permitted 6:20 13:5 34:6 persistent 88:11,15 person 153:5 165:16,19 172:11 180:7 214:20 274:7 299:9 313:23 persona 24:17 24:18 personal 109:12 241:23 243:20,21 244:6 personally 23:17,21 90:18 110:7 177:5 242:11 250:6 personnel 62:16 119:13 119:16 pertaining 194:14 265:2 pertinent 222:23 phenomenon 23:17 phone 172:16 209:11 217:8	219:15 303:13 photographs 308:23 phrase 8:7 11:1 204:3,13 204:15,21,22 204:23 205:6 206:11,16 207:7,11,12,14 207:22 208:2,6 208:9,13,13 209:8,22 210:1 210:14,16 240:22 270:17 271:2,3,4,9 292:13,14,18 phrased 152:16 physical 180:11,13,14 180:15 209:24 picture 288:24 pictures 145:18 piece 20:13 208:14,16,20 208:22 246:12 247:17 252:12 254:14 piecemeal 297:17 piecing 149:25 place 6:15 13:16,17 19:4 19:19 41:11 47:14 101:3 108:25 109:17	109:18 123:4 141:9 165:3,4 209:11 214:24 309:1 placed 45:5 places 164:10 plaintiff 1:13 5:3,12 30:18 30:20 31:23 94:24 123:16 188:17 plaintiff's 20:23 23:15 30:2 32:18,18 33:14 38:7 95:19 97:12 101:20,23 102:4 114:2 177:11 196:20 197:2,4,15,17 201:8,11 202:1 205:16,21 223:22 228:16 229:23 231:4 232:12 261:6,7 280:7,16 281:3 283:17 309:5 plaintiffs 3:3,9 4:4 7:17 8:5 33:10 93:10 179:12 188:11 200:1 206:10 210:8 247:20 265:17 plan 287:6 planned 187:6	platform 11:19 14:19 92:7 108:11 109:9 109:10 221:15 245:24 299:20 302:17 platforms 34:7 64:5 103:23 104:3,4 107:19 107:24,24 109:7 111:16 122:7,9 283:1 283:6 299:21 299:22 305:5 play 82:16,17 please 21:9 23:15,20 31:7 31:11 32:15 33:1,25 55:9 57:11 64:16 74:7 75:16 77:16 79:9 86:5 94:5 98:13 99:15 124:14 140:20 156:17 165:2 171:25 175:23 176:6,10 187:2 193:10,16 194:11 196:13 196:20 197:15 197:25 198:9 198:19 200:3 200:11 201:8 205:16,22 206:7 212:21 213:10 215:13
---	--	--	---

[please - pressured]

Page 59

220:1 223:23 229:23 230:17 244:9 247:1 269:8,17 282:11 283:9 plevin 9:17 plurality 190:10 244:5 plus 85:19 180:13 186:22 235:8,18 243:6 pm 140:4 315:15 point 18:25 20:12 27:7 52:16 62:23 67:13 70:10 72:21,24 74:18 80:24 102:11 116:4 127:15 133:13 136:7 151:6 152:13 159:14 160:23 162:3 163:10 167:13 169:11 178:2 209:7 211:5 213:22 219:7 221:1 246:12 252:11 253:20 254:2 254:14 269:14 274:4 289:21 293:15 303:18 pointed 9:12 points 101:17 115:22 174:11	policies 141:3 ponzi 92:12 93:1 pool 281:21 300:19 306:1 pools 63:7 140:23 141:1 300:13 305:23 poor 90:14,17 90:20,25 popular 16:22 71:22,23 73:7 146:17,19 147:3 160:10 population 296:16 portfolio 57:4 portion 40:20 40:23,25 41:5 45:1 173:18 306:18 portions 42:9 84:4 position 16:24 69:11,19 86:3 177:6 positions 20:5 23:12 103:23 104:7,14 105:3 105:5 109:8 121:2,12 122:11 123:1,2 123:5 163:14 163:17 164:15 283:2,5 302:22 302:24 305:7 306:15 307:22	possession 52:1,11 53:24 200:21 238:1 256:24 possibility 150:12 193:25 possible 111:7 138:15 157:9 157:10 161:20 163:16 241:1 263:10,10,12 possibly 6:15 post 74:25 75:2 267:22 posted 72:13 posting 71:11 72:10 potentially 180:8 247:25 282:8,19 praised 62:6 62:13 145:2,4 pre 16:15 20:11 26:17 200:19 precise 159:10 209:17 predominantly 140:22 prefer 58:24 preliminary 3:4,10 6:3 16:2 26:4,13 29:17 32:11 94:14 95:1 96:5 177:22	premise 132:1 prepare 224:18 227:6,13 280:17,20 prepared 13:22 48:12 82:3 230:20 259:24 preparing 209:20 258:20 presence 118:18 present 4:23 6:19 9:23 19:9 97:6 114:10,11 114:20,24 115:4 117:23 118:1,3,12 119:17 129:12 129:15,17 152:20 172:12 217:16 presented 26:7 247:10 281:9 presenting 97:7 press 30:10 63:21 69:25 pressure 136:13,15 141:11,13 158:6,10 169:11,16 pressured 60:15 136:19 136:21,23 157:19,23
--	--	--	---

<p>168:23 pressuring 60:20 168:23 169:2,14 pretrial 95:13 pretty 63:11 146:19 147:2 157:21 225:11 305:6 prevail 25:25 prevailing 248:8 prevent 12:17 107:12 preventing 13:24 previous 17:19 125:25 126:2 previously 97:5,10 139:9 150:20 314:23 price 23:23 54:13 100:12 100:25 101:5 101:17 102:13 102:18 103:10 103:15 117:12 120:12,18,23 140:24,25,25 142:13,22 143:1,12,21 165:8 257:17 258:11 281:14 281:14 300:12 302:19,20,24 303:7,18,22,24</p>	<p>prices 122:23 245:8,11 primarily 115:21 174:11 183:1 primary 161:5 principal 281:25 principally 122:21 print 186:18 printed 307:3 307:4 printout 66:13 66:16 67:8,9 67:24 73:6 182:2 183:15 186:11,22,23 printouts 65:25 66:3 145:9 183:25 307:6 prior 12:10 19:6 82:24 97:1 130:10 145:21 146:4 147:5,8,11,24 148:6 152:6,13 193:22 253:17 275:17 292:15 296:6 priorities 60:1 priority 60:2 private 8:7 9:20 11:2,5,10 11:15 16:10 182:17,18</p>	<p>206:11,16,19 206:20 207:1,2 207:15 210:18 240:22 262:9 263:16 271:18 272:3 pro 7:3 probably 62:10 100:5 115:18 119:6 174:8 200:7 215:4 234:23 265:16 268:14 294:16 298:21 304:12 problem 16:5 56:19 77:13 82:8 84:17 85:13 87:23 91:13 113:11 151:12 procedure 3:5 3:11 proceed 94:2 proceeding 3:1 7:4,7 proceedings 6:20 31:3 315:14 316:4 proceeds 229:8 241:7 242:18 242:19,20 258:14,18 259:1 273:23 305:9 process 130:18 149:25 288:14</p>	<p>proclaimed 17:3 produce 288:16 309:2 produced 43:4 43:8 44:18,20 44:22,24 45:7 97:16 98:24 222:11 223:5 308:2,4 product 87:16 87:17 profile 145:24 146:2,4 profit 17:21,25 18:1 21:7,11 21:12 22:14 23:2 41:4,5 51:17 54:12 58:8,9,11 60:15 68:13,19 68:21,23,25 69:5,9 96:22 98:15 108:12 110:2,6 112:1 112:2,4,16 114:9,13,21 115:2,3 127:19 127:21 130:9 147:21 148:3 152:2 163:9 170:2,9,13 172:19 173:1,2 173:19 210:23 211:14 212:8 212:17 213:12 213:16 217:9</p>
---	--	--	---

[profit - public]

Page 61

217:19 220:21 222:5 224:12 227:17,24 228:5 242:14 254:18 291:18 profitability 133:15,21 145:10 166:13 166:16,18 167:3,4 168:20 169:8 profitable 17:2 17:3 20:7 22:23 51:16,20 51:22 54:16 61:5,20 62:15 62:17 67:21 132:18,21,24 133:2,8,12,24 134:24 135:2,4 135:5,6 136:6 136:8 137:1,2 137:3 138:12 138:15,16,21 138:23,24 145:4 160:5,14 163:3 165:24 166:3,6 167:14 168:1,8 294:22 profits 18:2,3,3 18:6 22:18 40:21,23,24,25 96:24 97:2 105:20 106:2 106:16,22 110:8,10,15 112:9,12,17,18	172:25 218:4,7 218:8 219:2 222:2 296:18 297:19,21 307:22 program 15:23 20:5 103:21 110:25 111:2,6 144:2 145:7 162:2 164:18 224:21,25 226:5,16 progress 225:12 projects 24:15 251:8 promise 12:21 promised 100:10,23 101:12 117:10 117:13,14 118:15 promoted 146:22 promptly 7:11 prop 139:4,6 143:12 proper 85:25 properly 23:7 163:22 298:8 properties 114:9 property 8:14 8:16,20,21,25 9:1,21 10:2,4 10:10,23 11:10 12:13,19 13:4	13:13 15:24 25:21 34:12 114:21 173:4 212:8 218:15 219:22 228:15 228:23,24 229:5,7,11,13 229:14 238:2 245:23 278:23 304:18 proponent 308:21,24 309:2 proposed 34:6 proposition 10:5,7 proprietary 159:2 160:23 164:22 165:3 165:11 protect 89:2 protocol 24:19 24:22 54:15 162:13,23 163:8 304:6 protocols 6:7 51:21 69:21 162:21,24 163:7 prove 26:9 308:22 provide 91:3 103:22 166:12 194:14 198:25 203:7,19 206:10 228:21 229:17,19	236:8,12 289:7 292:14 297:7 304:3,9 308:4 308:12,18 309:6 provided 17:10 19:22 85:20 86:20 92:5 110:5 168:2 173:9,10 180:1 196:11 201:5 210:10 212:9 216:12 222:14 222:21 227:22 230:4 235:11 240:11 260:2 272:2 288:22 289:11 294:17 294:20,23 296:13 304:21 308:16 provides 13:10 13:24 87:10,19 103:23 194:13 194:25 199:19 206:9 224:10 228:20 253:5 265:8 308:21 providing 13:23 168:18 271:22 provision 291:25 294:9 pto 9:22 public 6:17 24:17 82:6 86:25 156:10
--	--	--	---

156:14 157:1,7 184:15 186:12 274:5 289:15 309:4 publicly 16:22 20:4 62:25 104:9,11 185:23 257:10 308:8,8 published 82:21 puerto 109:19 109:20 213:24 243:7,12 301:22 pull 101:19 113:5,6 164:4 165:20 170:24 301:17 pulled 65:1 punks 301:7 purchase 17:22 20:18 22:2,6,9 23:3 24:7 34:4,9 38:3 40:16,19 46:9,16 47:6,8 47:9 63:2,11 65:13 68:14 69:8 99:16,25 101:3,13,15 102:5,8,11,17 102:25 103:4,5 103:7,12 111:20 147:4 170:16 180:9 192:8 194:1,7	228:3 239:18 240:4 256:16 267:15,18 268:3,4,10 293:10,11,25 294:9 303:22 purchased 17:7 65:10 69:14,16 75:21 75:22 147:7,10 240:1,5,15 241:1 253:13 253:14 255:3 255:14,24 256:5,15,15 257:9 267:9 268:16 303:24 purchases 16:19,21,23 17:5 23:4 63:10,22 69:17 69:24 70:3 72:3 145:19,21 148:3,15 152:6 152:11,14,23 170:1 173:21 227:15 255:11 255:18,25 267:7 268:20 297:1 301:1,6 306:9 purpose 12:25 84:7 265:5 purposely 92:8 92:20,24 purposes 14:20 144:7,16 314:8	pursuant 3:4 3:10 32:22 229:16,24 270:22 pursuing 24:15 put 12:19 15:24 18:9 29:15 65:19 66:7 68:5 77:18 99:15 120:7,13 159:10 179:17 180:18 219:23 231:7,18 300:14 302:24 314:12 putting 92:11 102:16 px 95:16,17 100:19 191:12 191:14,14,23 191:24 193:2,5 198:11 224:2 232:17,18,21 234:4,25 235:10,13,13 235:17,18,21 247:2 269:6 289:19 292:6 292:21,22,23 293:1,7 295:4 295:20,21 px40 47:5 px59 33:8,10 35:1	q quantum 159:2 quarter 73:10 109:1 110:18 query 313:22 question 12:6 39:3,12,12,18 39:20,21 40:5 40:10 41:21,22 41:24 48:5,6 48:18,24 49:1 50:15,23 52:9 54:5 58:17,19 58:22 59:1 60:12,22 64:16 64:20 65:20 66:18,19 67:22 69:2 73:25 74:12 76:6,14 76:16 77:24 78:11,18 80:20 84:13 85:4 86:1,5,23 87:12,13 90:4 90:7,13,16 91:23,25 92:1 92:15,17 97:25 98:3,4,5 99:1 100:21 106:10 111:21 114:7 114:19 115:11 115:12,16,18 115:19 116:5 119:11 121:13 122:18 123:2 142:2,17
---	---	--	---

144:14 149:4 152:18 155:3,9 156:25 164:6 171:10,13 172:1,11,23 173:2,3,7,8,16 174:1,5,7,8,10 181:14,20 183:11,12 189:22 205:2,2 205:4 207:18 213:11,17,21 220:1,2,4,25 221:5 226:1,11 226:14 254:5,8 256:7 258:23 273:8,9 274:7 275:14 284:21 285:4 295:10 298:2 308:9,10 311:18 312:17 questioning 113:3 115:11 questions 7:24 48:22 64:19,20 83:8 93:5 107:2,7 110:1 111:9,19 112:20,21 116:19,20,25 117:6 121:6,7 123:11,13 157:12,15 158:13,21 159:1,20 161:1 162:9 163:11 163:23 164:21	170:20,21,22 170:22 181:12 182:8 185:25 186:9,11 187:7 208:12 214:4 234:22 256:10 260:6 281:8 287:25 301:18 301:19 307:8 310:21 313:1 quick 6:13 283:24 quickly 18:21 24:5 140:15 153:1 165:22 283:24 quinn 249:13 quit 268:5 quite 33:22 36:13 99:18 231:8 276:11 quo 8:18 9:9 14:9 quote 53:18 82:6,13,14 87:21 88:25 89:11,21 91:2 quoted 21:6 281:25 quoting 87:15 r r 2:1 4:1 6:1 316:1 rails 285:1 raise 7:13,23 31:6 94:5 124:14 175:23	254:6 raised 7:6 ran 64:4 67:20 range 155:10 rarely 61:8 rate 140:11 195:1,11 196:2 248:8 256:16 297:20 rather 40:12 65:1 71:3 259:10 reach 12:19 15:25 reached 183:3 218:5 read 33:25 35:9 37:19 44:4,7 45:15 46:5,5 50:22 58:22 65:24 73:18,24 74:2 74:4 75:9,16 77:4,6,11,24 80:1 81:24 95:15 96:13 99:18 101:6,18 103:12 112:19 113:1 144:21 170:19,21 171:18 209:8 215:25 226:5 226:20 234:23 255:10,13 265:14 273:11 273:12 282:20 293:16 296:7	296:14 311:15 312:2 reading 48:1 74:23 171:15 210:3,5 213:9 226:1 readmit 124:6 readout 309:8 reads 46:7 ready 70:18,19 89:13,15 93:23 175:10,21,22 175:23 187:15 reaffirm 95:6 real 57:16 163:21 165:20 171:12 251:16 283:12 305:14 realize 120:13 314:10 realized 23:25 288:15 really 14:2 24:7 27:6 45:19 55:15 182:22 221:1 234:4 269:22 286:13 314:2 reason 13:7 15:23 29:14 34:13 43:7 99:5 115:17 142:4 144:17 144:19 148:24 149:7 174:6 175:17 209:19 223:13 298:5
--	---	--	---

reasonable 309:1	152:22,25 153:9,18	66:12 67:24 70:22 73:6	287:14,15 296:4 297:16
reasoning 150:7,11	154:11,14,16 154:17 155:10	94:23 95:2 97:13,17 102:4	307:23 316:4
reasons 26:12 42:8 159:13 303:4	155:12,24 157:4,25 160:15,20,25	102:8 135:11 139:12 150:25 177:18 178:23	recording 82:25 175:16
rebuttal 287:7 313:18 314:20	164:14,16 166:14,24	181:24 191:24 193:11 198:3	recordings 308:23
recall 35:8 52:15 54:18 59:7 60:20 61:22 62:18,20 70:9 72:4 78:22 82:12,15 84:18,20 88:19 89:24 97:20 101:18 102:16 103:13,14,17 105:10 108:25 109:11 114:12 118:10,11 125:3 128:21 128:22 129:10 129:16,20 131:2,6,9,10 131:11,12 133:3,9 135:3 137:6 138:13 138:15,23 141:2,5,10,21 141:23 142:18 142:20 144:10 145:12 146:14 146:16 147:16 148:9,12,15,17 152:12,19,21	167:8,9,22 170:7,10,14,18 171:20 172:7,9 172:17,21 173:16,21 174:14,20 192:15 213:21 242:17 294:14 300:1 301:18 304:23 309:14	205:25 206:4 230:9 232:12 235:10 288:4,5 293:9 295:23	records 96:24 293:22 297:17
	recalled 56:23	recognized 12:15 88:20	recover 12:13 12:19 13:12,14 14:11 207:14
	receive 112:6,8 201:25 295:1	recognizes 74:3	recoveries 14:21
	received 79:12 86:18 87:2 119:17 199:12 217:6 258:18 259:2 270:16	recollection 47:12 52:4 53:22 71:14 72:14 79:7,15 80:2 81:13,25 115:6 120:1 152:17 166:25 172:2,3 215:18 215:19 216:6 217:13	recovery 207:11
	recent 184:13	record 8:4 27:16 44:7 50:12 74:24 75:16 77:5 83:18,19 85:15 88:10 93:12 94:18 107:6 124:7 158:17 175:15 178:11 221:2 225:16	recross 287:10 311:6
	recently 88:4 168:15		recurring 291:20
	recess 83:6,14 83:17 225:14 225:14		red 257:5
	recognize 16:16 32:18 33:1 36:23 42:17 55:11		redact 42:8
			redirect 85:24 93:6,7 107:3,4 158:14,15,20 158:22,23,24 256:11 286:2 287:16,23
			redress 272:25
			refer 28:3 36:16 43:17 49:7 52:18 54:21 96:10 167:2,3 188:14 188:18,24 202:17 208:16 222:4 229:3

[refer - remember]

Page 65

271:15 292:6 reference 102:24 192:8 192:21 249:22 283:16 referenced 11:13 105:7,17 109:9 197:22 205:7,22 238:19 280:19 282:15 283:17 references 102:25 221:19 221:22 224:4,5 referencing 105:10 referred 16:11 19:20 135:6 207:1,11,19 233:15 238:13 247:13 referring 21:22 46:12 55:20 68:4 81:11 99:2 115:20 125:15 131:15 140:10 151:17 156:12 166:10 166:11 171:10 172:13 174:9 179:18 191:8 200:4 224:8 236:4 269:16 269:17 290:3 295:20 309:15 refers 120:5,6 199:7 229:5,13	241:3 281:17 281:20 290:18 reflect 89:8 106:15 138:19 254:17 255:14 264:8 reflected 51:3 51:5 240:13 253:16 308:5 reflects 221:23 222:1 230:22 235:24 247:4 253:13 254:19 255:2,9,10 262:18 265:11 refresh 47:12 53:22 56:25 71:14 79:7,15 81:13,25 120:1 refreshes 80:2 refusing 8:14 refuting 106:4 106:5 regarded 126:12 regarding 6:14 110:6 129:6 159:1 173:17 217:16 registered 6:16 113:20 regular 252:18 252:19 regularly 119:5,7 130:1 274:9,11	regulations 302:3 regulators 82:6 84:16 85:12 86:17 87:1,21 reichelt 277:4 280:19 relate 176:22 related 29:4 145:17 147:19 150:4 225:25 229:6 247:25 284:25 285:4 292:2 relates 28:21 138:22 171:8 276:13 relating 27:14 27:25 102:17 305:3 306:20 311:24 relation 43:20 relationship 62:7 101:13 169:18,19,21 192:24 236:23 relative 120:12 120:14,18,20 121:1 release 30:10 relevance 28:19 110:11 156:7 181:9,12 277:22 278:2 relevant 14:1 42:10 84:4	162:15 189:13 258:22 293:21 306:11 309:3 relied 302:18 relief 8:19 26:8 relying 226:16 227:11 310:11 remain 240:19 256:23 remained 13:17 remaining 281:24 296:16 remains 250:12 remark 48:9 remember 35:5 35:6 42:16 46:11 52:14 55:15 57:15,16 78:20 90:4 91:7,9,13 114:16 129:19 129:22 134:1 137:4 144:8 153:14,19 154:1,6,9 157:22 159:5 167:2,6 168:12 168:14 173:21 173:22 207:24 213:7 219:12 236:17,24 237:3,6 241:21 242:16 251:3 251:10 270:19 285:11
---	---	--	--

remind 165:2 265:8 reminder 262:17 removed 28:9 275:20,21 310:5 removing 94:19 rendered 114:22 rent 243:4,7,11 243:21 301:18 rented 243:15 reopened 113:8 reorganize 264:11 repay 241:23 278:23 repaying 242:9 243:20 repayment 241:16 279:2 repeat 40:10 41:24 58:19 100:21 128:6 139:5 149:4 152:18 168:25 169:13 220:3 254:11 298:1 repeated 8:15 203:1 repeatedly 111:3 repeating 168:1	replace 235:13 replacing 165:8 reply 100:15 100:18 116:22 117:2 report 43:2 110:24 227:22 277:25 reported 126:3 reporter 31:6 42:14 46:19,25 54:24 178:19 reports 57:18 represent 18:17 48:11,13 61:25 65:16 96:3 125:1 184:12 185:4 185:13,16,18 249:15 representation 106:21 representations 20:10 represented 108:5 123:7 249:6 representing 7:1 106:18 186:8 represents 21:7 132:2,3 184:13 185:5 repurchase 303:10,12	repurchased 303:14,17 request 28:22 50:3 213:25 302:5,6 requested 13:16 requests 130:14,16 222:21 require 83:9 required 206:9 226:13,14 227:7 228:20 229:16 235:19 288:16 requirement 101:4,16 requires 307:24 requiring 33:17 205:13 reread 178:1 research 208:23 reserve 180:2 reserved 56:13 178:8 reserving 56:7 residence 109:18 resignation 19:7 169:21 172:24 218:2 223:12 263:14 266:1,12,17 267:19,22	resigned 11:7 11:15 18:8 23:8 25:3,9 151:24 167:10 246:3,7 248:24 262:7 263:18 263:25 264:3 265:24 267:3 270:13 294:5 294:13 313:7 resigning 191:5,25 resolution 202:23 resolutions 10:25,25 11:8 11:9 203:3,9 203:13 resolve 19:10 24:13 respect 7:25 23:22 29:22 30:2 56:6,12 108:3 109:3 111:19 122:25 161:12 173:11 177:24 180:4 199:6,10 241:5 244:2 250:21 251:10 257:25 258:6 267:2 respectfully 26:12 86:2 respond 29:10 57:14 136:1 responding 71:4
---	---	--	---

[responds - right]

Page 67

responds 57:9 response 5:23 71:5 73:18 80:7 179:1,1,3 179:5 296:5 responsibiliti... 102:18 161:15 responsibility 102:12 108:3 116:16 161:4 161:12,17 163:13 164:24 responsible 107:14 108:7 153:5 165:10 251:6 279:23 280:1 299:8 responsive 48:15 254:6,7 rest 18:20 23:11 26:11 29:15 30:4 123:16 151:15 287:7 313:15 313:16 rested 314:20 restitution 304:3,9 restricted 14:13 restroom 93:22 175:10 result 24:21 149:14 273:1 302:19,21 303:1 311:22	resulted 110:14 resulting 23:23 results 110:25 111:7 211:11 resume 124:2 175:12 286:22 resuming 114:2 retain 224:11 291:17 retained 297:1 retrieving 93:14 return 7:12 8:14,15 10:23 11:1,10,16 39:8 54:15 76:12,16,19,19 109:25 200:20 201:6 204:16 204:19 264:9 271:2 277:20 278:1,9,12 279:6,9,12,13 279:15,17 285:14 returned 18:1 23:12 60:3 96:11,19 204:23 257:2 262:23 263:4 266:4,9,24 296:8 returning 41:4 52:16 93:21	returns 39:11 284:22 285:3 285:21 rev 98:8 revenue 99:2 revenues 199:11 279:22 288:15 289:1 reviewed 81:9 97:21 281:3 reviewing 226:4 revised 229:24 230:4,6 232:18 233:12,25 234:2 235:10 235:14,17 247:1 revolved 127:5 rewards 57:17 306:8 rico 109:19,20 213:24 243:7 243:12 301:22 right 6:19 7:19 7:22 15:12,17 22:10 25:19 26:15 27:6 28:2,12,16 29:15,16 30:15 31:6,24 33:12 34:16 36:23 37:12,14 38:4 42:11 46:5 48:20 55:20 57:24 58:3 60:13 62:25	63:12,18 64:6 64:18,19 67:7 68:14 69:24 70:5 74:4 75:15 76:8 79:12,14 82:20 85:4 91:11,17 93:6,8 94:5 108:17 109:15 110:2 111:10 113:10 114:1 116:16,19 121:5 123:15 123:18 124:2,8 124:9,12,14 125:21 137:15 137:24 139:22 140:4 143:25 154:22 158:14 160:10 165:24 169:3 170:2,19 173:3 174:24 175:4,11,16,23 178:18,21 183:17 185:1 186:2,12,18,20 188:22 189:14 190:1,4,6,8,10 190:13,16,20 190:24 191:2,6 191:10 192:4 192:14,16,24 193:14 194:1,9 195:14,17,19 195:20 196:3 197:9,23 198:7 198:12,25
---	--	---	--

[right - roche]

Page 68

199:3,8,16,24	238:14,22	271:5,10,14,17	122:3,6,11,22
200:24 201:6	239:3,6,10,14	271:19 272:2,7	123:5 141:8
202:12 203:3	239:18 240:2	272:9,11	165:2,4
203:14,17,21	240:11,12,23	273:17,20	risks 89:23
204:4 205:13	241:2,7,9,24	274:2,4,9,13	100:24 117:11
206:5,19,24	242:2,7,11,15	274:16,19,22	118:16 300:1
207:2,5,8,12	242:16,18,24	274:25 275:5	road 316:21
207:16,20,24	243:7,15,20,25	275:10,12,24	roche 4:14,19
208:3,6,14,20	244:3,4,7,24	276:2,5,8,11	15:2,3,10,13
208:24 209:1,5	245:2,9,12,15	276:12,15,16	15:16,18,20
210:8,12,15	245:24 246:3,7	276:22 277:2	16:9,12,14
211:15,18,21	246:13,19,22	277:11,18	21:14,16,20,23
212:1,4,18	247:1,11,15,23	278:24 280:9	22:1,5,8,11,14
214:12,17,18	247:24 248:5,9	280:17 281:1,5	24:11 25:1,6
214:21,25	248:11,24	281:12,18,21	25:12,16,20
215:10 216:6	249:16,20	282:8 283:7	26:3,5,16,19
216:18,24	250:3,6,10,20	284:2,24 285:7	26:21 27:9,13
217:14,20,20	251:2,15,17,18	285:10,19	27:17,20 28:5
217:23 218:2,5	251:24 252:4,8	286:1,19	28:7,19 30:23
218:12,17	253:4,5,15,23	287:15 288:3	32:2 34:16
219:12,15	254:16,23	292:6 298:9	95:12 96:1,2
220:14 221:18	255:21,25	301:14 303:4	96:15,17,18
222:11 223:5,6	256:1,5,17,20	304:8 310:22	97:8 98:3,6,10
223:8,9,16	256:25 257:3,8	312:5,11,20	98:17,18 99:9
224:2,4,8,15	257:8,21,22,23	313:4,6,7,17	100:17,20
224:22 225:2	258:4,9,12,15	313:20 314:13	101:25 102:3
225:13 227:1,4	259:2,5 261:14	risk 14:3,11	105:12,23
227:7,13,17,20	262:4,11 263:1	61:8 89:23	106:10,14
227:25 228:5	263:17,22	100:12 101:4	107:2 110:11
228:10 229:11	264:2,25 265:4	102:13 103:10	112:22 113:4
229:17,21	265:8,24 266:5	108:5,7,9,22	113:24 114:1
230:7,13	266:14 267:7	110:17,18	121:5,7,9,22
231:16 232:19	267:16,20	117:17,19,22	122:15,17,20
233:13,17,19	268:1,5,11,19	118:12 119:3,3	123:11,23
233:23 234:2	269:3,23 270:7	119:9,10	124:23 125:1
235:4,8,15,19	270:14,18,21	120:24 121:18	125:21,22
236:6 237:14	270:25,25	121:23,24,25	134:4,9,10,20

134:22 137:7 137:10,13,20 138:2,3 141:18 143:8 144:22 144:23 148:23 149:3 150:13 150:16,24 155:1,6,8,13 155:15 156:4,9 156:22,24 157:12,15,17 158:3,5,13 168:3 170:24 171:2,4,6,12 175:2,8,9,14 175:19,21 176:9 177:13 177:16 178:2,7 178:10,14,15 178:22 179:9 179:16 180:5,6 180:19,22,23 181:7,11,16,18 181:21,23 182:7 183:22 184:8,11,23,25 185:3,13,17,25 187:3,21,22 188:7 191:13 194:2 196:21 196:23,25 205:17 211:7 212:23,25 223:1 232:6,9 249:6,9,12 259:12,15 260:13,18,24	271:20 277:22 278:2 286:1,3 286:9,15,24 287:4,17,24 290:14,15,22 290:24 291:2,5 293:3,7,8 295:15,16 299:3,7 306:5 306:25 307:5 307:11,20 308:2,7,11,14 309:6,8,10,11 310:17,21 313:14,16 314:4,7,23 315:3,6,11 roche's 313:11 role 111:19,22 125:25 126:11 130:12 roles 126:2 rolled 177:6 romanette 203:5 roni 114:11 173:14 201:13 202:4,6 292:9 292:12 296:1 room 17:14 18:5 113:19 298:11 314:12 rose 237:24 rough 237:4 roughly 19:14 23:13	round 249:23 row 238:3 240:8,9 242:5 248:17 250:20 252:1 260:20 260:21,22 264:7 269:7,10 269:19,21,23 269:23,23 270:3 rows 237:20,21 242:23 243:17 243:23 250:15 251:24 252:6 256:24 257:5 257:11 rule 3:4,10 30:4,24 31:1 83:3 134:15 308:19 rules 3:5,11 75:17 ruling 56:7 58:22 178:8 180:2 run 92:10,22 rushing 225:8 s s 4:1 5:2,2,2,10 6:1 203:8,23 safe 79:3 80:6 80:13 safely 305:6 salary 313:4 sale 258:9,18 259:2 285:13	sales 57:18 sat 112:14 satisfy 8:21,22 14:5 sauborn 249:5 save 24:11 saw 84:19 85:1 111:4 139:22 saying 48:6 54:15 57:3 59:7,25 61:22 62:18,20 82:12 98:7 116:7 122:11 139:25 159:14 171:10 171:22 172:2 215:6,18 221:22 253:4 253:21 263:2 263:11,13 265:19,20 272:22 says 14:10 37:18 43:25 45:21 47:19 48:9 49:3 50:3 50:12,12,18,18 57:5,10 67:11 71:7 77:15 78:1 79:25 81:19 82:4 84:12 97:15 98:14,14 99:3 99:10 117:9 135:19,22 184:3,18
--	---	--	---

[says - see]

Page 70

186:20 193:21 194:12,12,22 196:9,16 199:5 199:10 200:12 200:14 201:13 230:19,22 235:21 247:2 247:18 249:1 253:3,6,20 265:9 281:23 282:25 283:11 288:13 290:3,8 290:17 291:4 scan 251:4 scapegoats 16:7 18:14 schedule 21:10 21:25 22:5,9 199:21 224:1 289:25 scheduled 3:7 119:3,5,7 293:19 scheme 93:2 scope 36:13 298:24 313:10 scott 4:11 screen 45:6 54:22,25 66:14 66:17 93:17 97:9 231:7,16 231:18,21,23 232:1 234:12 234:25 259:23 315:8 screenshot 57:4,10	screenshots 166:15 289:14 scroll 45:20 98:21,25 140:3 se 7:3 searched 220:13 223:18 seat 31:11 second 9:11 15:10 16:24 17:11 18:22 19:5 20:16 21:1,19 22:8,9 28:12 44:15 48:16 53:6 55:20 57:15 66:19 71:2 93:25 96:7,10 105:7 113:4 134:8 137:15 139:17 143:25 151:12 154:25 164:5 183:23 225:24 247:3 265:9 288:12 291:12 294:14 295:21 seconds 85:18 85:21 secreting 13:24 secretions 12:10 section 20:23 21:6,21 secure 92:9,25 203:24	securities 86:8 87:1,3,9,15 see 12:7 21:24 22:3 26:6 30:2 31:20 32:23 36:20 37:9 42:16 43:15,24 44:1,3 45:21 46:1,2,4,8 47:8 48:6 49:3,20 50:1,6 53:4,7,8 53:19 55:15 57:2,6,11 59:15,24 60:4 60:8,11 61:24 66:14,24,24 67:5,12 68:1 69:12 71:1,6,8 71:11 72:16,23 73:9,11,13,15 74:24 75:16,17 77:15,18,21 78:1,3 79:18 79:23 81:9,13 81:18,20,20 82:21 83:2 98:7,8,12,14 98:14 99:1 106:24 135:20 136:3 139:19 139:23 140:4,8 142:1 151:17 151:21 158:8 158:11,12 161:24 162:14 163:21 179:24 184:22,24	186:15 189:10 191:13,14 192:9 193:6,8 193:19,23 194:16,19,23 195:4,12 196:11,18 197:5,9,18 198:14,15,21 199:5,10,14,21 200:14,17 201:14 202:6 202:15,18,24 203:6,10,11,13 206:13 210:25 215:23 224:5 224:12 228:25 229:2,8,14 230:2,25 231:15,17 232:21 233:6 234:8,12 235:1 235:25 237:20 238:4,9 239:18 241:2,13,16,17 244:24 245:18 245:20 247:6 248:18,21 249:4,25 252:2 258:20 260:10 260:12,17,22 261:17,18,23 264:17,19 266:23 267:12 269:13,15,22 270:4 272:9 282:2,4 283:3
---	--	---	---

283:14 287:12 288:17 289:3 289:21 291:21 293:23 305:21 305:25 306:1,6 306:8,9,9,10 306:12,15 312:2,24 315:7 315:7,8 seed 8:7 11:1 203:7,19 204:3 204:13,15,21 204:22,23 205:6,11 206:11,16 207:7,11,14,14 207:22 208:2,6 208:9,13,13,17 208:19,22 209:1,5,8,22 210:1,7,10,14 210:16 237:2 240:22 249:23 270:17 271:2,3 271:4,9 292:13 292:14,17 seeds 236:5,10 236:15 seeing 97:20 seek 287:10 seeking 8:17 8:17 13:12 14:9 26:8 seem 284:18 313:10 seems 8:13 139:15	seen 48:16,23 58:6 69:24 70:1 74:10,15 75:2,18 82:19 84:11 96:24 97:1,3,17 110:7 159:17 194:4 segments 90:9 select 295:6 selected 207:8 207:9 self 10:7 sell 57:17 122:4 141:15 142:2,7 285:12 seller 293:20 293:21,25 seller's 293:22 selling 87:8 send 37:17 41:10 47:15 51:15 130:14 130:16,18,22 140:7 179:17 236:14 259:8 296:3 298:8 sending 19:17 41:25 161:1,4 223:12 266:1 274:7 sends 57:2 senior 202:7,9 sensation 71:1 71:8 sense 119:1 225:7 270:20	272:24 sent 11:9 19:16 20:1 22:25 23:12,14 41:17 42:17 45:16 47:13,17,21 48:7,10 49:4,6 49:17 50:9 51:11,19,23 52:2,10 53:23 54:1,3,5,10 55:16 58:13 59:4,24 104:6 104:9 112:5 114:1 119:18 127:8 130:13 130:16 135:19 137:13 151:24 161:8 169:20 171:11 191:9 191:24 201:13 218:1 227:25 230:6 237:13 247:5,18,19 259:25 265:11 268:21,22 275:2,9 289:5 292:10 295:22 296:4,6,12 300:16 309:25 311:21 sentence 117:9 118:14 119:12 151:21 196:9 separate 6:12 118:7 237:1 245:14 252:10	253:18 263:17 266:2 274:24 275:2 separateness 40:2 september 11:14 19:19 24:21 32:9 47:17 50:1 52:3,3 57:2 86:7,12 87:5 189:10 190:1 195:3 204:3,17 204:17 237:2 245:18,19,21 246:2,5 260:10 261:18,21,23 262:6,10,14,14 264:18 269:14 270:11 271:8 298:21 301:23 series 8:10 13:2 182:22,25 184:19 185:14 208:19 serious 12:5 serve 89:2 served 33:16 service 20:18 20:20 87:11 192:21,22 193:6 197:17 197:21 services 19:21 39:8,15,19 87:10,14,18 114:22 193:1,6
--	---	---	---

194:12,12,15	share 15:6	sheet 18:11	shown 58:10
194:16,22	17:25 18:1	148:21 149:7	162:15 288:23
195:2,12	21:7,11,12	255:18 258:20	shows 53:18
196:10 198:21	22:14 42:12	264:7 288:14	66:17 67:6
198:23,24,24	68:13,19,22,25	sheran 77:17	98:15 163:6
199:2,6,10,20	69:5,9 98:15	shifted 159:18	233:1 234:5
223:23 252:20	99:3 110:2,6	short 123:23	239:5 245:3
252:25 253:1,4	112:16 114:9	142:12,17,25	269:25
253:23 254:16	114:14,22	237:3 307:2	shuffle 46:21
254:23,24	115:2,3 127:19	shorted 142:22	shy 187:21
289:16,17,17	127:21 130:9	shorten 286:11	side 123:10
289:24 291:13	166:14 170:9	shorter 123:21	260:14 308:1
291:24	170:13 172:20	123:21,22	sides 17:15
serving 10:7	173:2,2,19	shortly 13:17	314:20
session 83:25	209:19 210:24	18:7 23:8	siena 108:7,8
set 11:8 18:12	211:14 212:9	148:19 149:5	108:17 109:3
22:15 24:2	212:17 213:12	shot 90:10	117:21,23
112:16 120:25	213:16 217:9	show 8:24 12:4	118:3,3,8
122:4 138:25	217:20 218:4,7	13:9 16:17	sign 198:16
151:14 165:12	218:8 220:21	20:3 26:1,11	signature 33:2
165:18 185:21	222:5 227:17	45:20 65:22	193:11 198:1,3
199:20 224:7	227:24 228:5	83:2,11,14,15	198:5 205:23
289:25 314:25	231:18,21,22	83:23,23,24	205:25 206:5
setting 12:16	232:1 234:6	97:1,11 104:2	230:10,13
109:6 165:7	254:18 277:12	104:3 111:14	316:7
seven 196:23	297:21 307:11	162:22,25,25	signed 22:17
237:7,8 282:11	307:13	163:8,10 164:3	33:4 38:3,5
293:15	shared 24:20	166:16 167:19	46:10,11 103:7
seven's 196:22	25:1 104:2	255:18 264:9	172:24 198:6
seventy 261:5	138:17,18	294:23 307:7	198:15 206:2
several 27:5	168:13 182:6	307:21	211:20 224:24
35:5 63:19	182:12,16	showed 65:25	significance
90:25 91:10	183:6 211:5	90:9 145:9	8:12
236:19 283:1	shares 68:23	showing 20:13	significant
shabout	sharing 98:8	55:1,4 66:3	51:11 79:2
115:24 116:11	148:3 305:2	97:10 98:20	80:6 96:12,20
174:13		166:15	

signing 193:13	313:4	software's	88:9,9 94:24
similar 97:18	sit 177:23	302:20	100:14,21
123:4 167:17	sits 88:20 89:8	sold 240:16	117:1 118:19
167:20,21	sitting 18:18	241:5 258:7,15	128:6 137:25
278:23	78:22 101:15	278:17	139:5 144:20
similarly 83:9	102:16 103:8	sole 199:19	149:4 151:6,18
simple 39:13	155:16 251:14	289:24	152:16 153:7
52:9 99:1	259:1,3 281:18	solely 10:7	153:21 155:19
121:3 122:22	282:14	solemnly 31:7	156:19 168:25
simplify 29:19	situation	94:6 124:15	169:13 183:10
simply 54:5	129:22	175:24	189:5 192:10
122:23 178:11	six 11:14 21:4	soliciting 87:8	195:25 201:8
300:14	67:11 92:5	solutions	211:2,10,10
single 20:13	205:8 246:2,6	316:20	213:1,18 214:3
123:9 208:14	255:8 270:13	somebody	218:25 220:3
218:19 246:12	270:16 286:20	280:25	220:24 221:10
246:13 250:17	286:21	sonya 3:25	230:9 244:19
251:1,7 252:11	sixth 183:24	316:3,8	246:5 252:16
sir 33:2 189:2	sixty 205:17,18	soon 16:3,4	253:14 254:11
190:20 191:12	size 209:1,3	24:9	255:5,12 256:9
191:23 196:6	231:19 234:23	sooner 13:9	258:23 261:23
197:15 198:3	slack 133:19	sophisticated	262:14 268:4
201:25 204:20	135:14 139:15	64:5 67:21	269:10,14,17
205:6,22	151:3	sorry 11:9	269:22 271:7
210:22 212:5	slash 206:4,4	21:24 30:7	284:23 285:4,5
212:21 213:5	slide 21:9,15	35:21 39:2	290:9,11 298:2
213:10 214:5	23:15	50:10,14 52:24	305:11 307:17
215:23 216:7	small 115:1	53:15 56:17	310:9
225:23 226:20	smaller 209:1	58:19,21 59:5	sort 9:12 83:9
228:13 232:12	smiley 228:9	59:12 60:12	149:25 172:8
233:13 254:2	228:12	62:12 66:22	172:19 261:11
259:23 268:15	snapshot 79:23	67:10 68:1	sortable 260:1
272:9 273:11	163:10	69:15 71:3	sorted 260:7
275:14 277:20	social 73:7	73:22 74:1,12	269:7
282:11,20	software 164:3	76:2,19 77:10	sorting 260:2
284:22 311:13	224:21 226:7	77:18,21 78:9	sound 86:23
312:2,8,11,15	299:13	81:2,6 86:11	242:24 245:2

256:20 257:20	100:10,23	240:2,6,11	standard 26:3
262:4 264:24	109:9 112:11	242:6 244:11	standing 89:12
268:10 275:5	116:10 117:6	244:17,18,20	89:18
280:9	117:10,13	253:9 259:9,25	standstill
sounds 85:1	118:15 171:22	263:15 264:11	13:16 29:6,11
210:12 214:18	203:6 228:4,22	272:17,18	start 7:20 8:2
228:11 242:16	265:15 295:11	301:15,16,17	26:16 137:18
257:22 268:1	300:13 302:17	306:24 307:6	158:21 171:3
274:20,23	305:5	308:17 309:15	186:10 187:10
275:1	specifies	309:17	188:9 214:23
source 167:12	102:12	spreadsheets	215:17 226:1
southern 1:2	speculate	269:2	299:19 313:20
space 24:15	157:11	squandered	started 6:13
176:13,15,18	speed 12:11	9:1,8	7:14 35:17
span 264:18	spend 18:20	st 208:23 209:9	41:8 56:18
spanned	252:21 309:24	stable 11:18	100:4 124:8
245:18	spent 12:3	24:22 57:17,20	175:16 176:17
speak 6:21 7:4	13:12 241:12	57:23 246:21	212:4 298:21
7:5,10,10	242:23 243:2,4	246:24 270:7	304:12,15
124:19 176:6	243:17,23	296:12 303:11	starter 135:22
307:16	249:1 250:15	305:25	starting 19:15
speaking 48:21	252:17 256:12	stablecoin	172:23 195:2
58:23 209:25	267:22 268:5	142:9	299:17 314:21
speaks 38:25	276:15,16,17	stablecoins	state 17:20
specific 63:2	309:21	89:10 106:3	19:13 59:6
87:11,16	spoke 59:25	132:8	85:12,14
115:16 147:2	130:9	stables 296:8	138:11 176:10
159:14 165:13	sporadically	stack 94:19	297:15 301:24
174:5 185:9	43:2	stage 295:13	302:4
189:15 220:22	spreadsheet	stake 177:1	stated 59:5
222:5,8 242:21	5:17 42:6,7	250:5	88:4 89:21
251:4 257:9	98:19 230:22	stakes 283:1	92:7 106:15
276:13 285:4	231:5 232:13	staking 34:3,6	statement 8:2
299:9 308:18	232:18 233:11	189:14 194:15	15:21 82:24
specifically	233:12 234:12	stand 6:23 7:1	84:11,20,24
10:3 26:20	234:13 235:1	31:5,6 94:20	89:24,25 90:2
28:3 71:10	237:10,12	287:16 307:19	90:5,8 91:7,13

96:14 228:22	stone 1:15 3:2	119:10,13,16	288:4 293:9
229:17,19,20	4:15,21,24 5:8	123:3,7 127:2	295:6,17 307:7
232:19 235:18	5:22 6:4,16,18	127:5,8,12	307:12 309:12
statements	6:25 10:8,12	130:3,9,14	311:6 314:18
7:18,23 78:17	11:7,15 15:22	132:20 136:11	stone's 19:7
91:19 118:4,17	15:23 16:10,21	139:4,7 145:2	20:9 23:19
156:10,12,13	16:21,24 17:11	145:19,24	24:16 69:11,12
156:16 157:1,5	17:18 18:7,18	146:7 147:4,7	102:25 106:7
157:7	18:19 19:3	147:10 148:1,2	106:18,21
states 1:1,18	20:13,19 22:22	148:14,20	109:18,23
32:21 39:16	23:2,5,8,11,17	149:6 151:24	112:20 113:2
87:17 285:2	23:21 24:2,14	152:10,11,24	145:21 146:5
293:16	24:17,18 25:15	155:25 162:8	147:24 148:6
static 103:23	35:17 41:15	166:11,12	148:19,19
stating 23:20	42:12 43:13,16	167:10,18,22	149:5 152:6,6
status 8:18 9:9	43:16,17,21	168:2,10 170:5	152:13,22
14:9 111:2	44:23,24 49:18	170:8,12 172:8	170:20 171:8
stay 13:19,23	50:2 55:13	172:19 173:17	212:24 243:20
124:4	56:14 57:2	173:17,22	stop 11:11
stayed 257:2	58:8 59:3,17	174:14 176:2,4	48:20,20 50:22
steal 16:3 76:1	60:15 62:6,11	176:5,7,8,10	64:17,17,17
76:3	62:13 69:7,14	176:11,12	65:18 66:18
stealing 16:4	69:16 70:23	178:12,16,23	71:11 72:6,9
71:25	71:18 82:17	179:17 180:24	77:20,23 86:22
step 293:9	97:6 98:13,13	181:24 183:23	86:22 109:7,8
stepped 113:16	99:14 101:1	185:18 186:5,7	123:4 169:14
stipulate 65:21	104:6,13,24	187:5 188:9	220:25 275:15
stipulated 9:22	105:4,8 106:1	192:14 198:6	286:20 304:13
200:18	106:9,13,17,18	200:12 201:13	313:12
stipulation	107:15 108:3,5	205:1 211:9	stopped 151:9
13:10 16:15	108:8,9 109:20	219:10 221:7,9	169:18,18,19
229:25 292:16	109:22 110:22	221:12 225:17	275:6 307:2
310:15,17	111:1 114:13	225:19 228:23	stored 207:5
stole 16:18,20	115:12 116:1	229:2,8,13,24	208:9
17:17 69:19	116:12 117:16	234:13 244:18	strategies 58:2
stolen 15:24	117:24 118:3	256:10 275:18	107:20 117:18
	118:17 119:1,8	287:16,23,25	121:4 122:3,23

127:12 128:11 129:3 138:12 161:10,14 162:18 166:5 168:1 296:23 strategy 62:17 121:3 135:2 137:1 138:21 141:20 143:14 143:23 159:3 159:16,16,18 159:18 163:3 strauss 4:3 7:16 8:4 107:6 158:18 186:8 stricken 50:13 strike 48:15 51:4 76:19 78:24 101:14 111:21 189:21 291:24 294:5 string 206:20 206:23 strong 89:12 89:18 stronger 88:25 strongly 136:21 struck 18:6 23:25 structure 6:14 subject 37:11 70:25 71:2,6 225:20 228:24 229:5,14 252:2 submissions 20:11	submit 14:15 25:13 177:10 submitted 32:10 33:19 94:13,25 95:3 96:3 102:22 177:24 182:9 309:13 subpoena 33:16 subsequent 172:15 subsequently 177:9 subset 87:15 substantial 13:12 52:7 107:12 210:23 211:13 substantially 286:11 substantive 33:23 successor 176:24 sued 88:11 suffer 14:18 26:2 303:1 suffered 272:25 312:11 312:12,19 sufficient 54:6 suggests 14:2 suit 19:12 suite 316:22 sum 252:7 256:13	summaries 167:17,20 summary 307:20 308:21 summer 11:3 127:2 304:13 sums 245:1 252:1,4 256:19 266:22 super 234:15 supplied 259:11 supply 103:18 235:19 support 10:15 28:23 78:16 94:13,25 95:10 223:19 supported 9:14 162:21 163:8 306:17 supportive 159:21,24 supposed 10:11 21:2 38:14,17,22 39:5,8,25 40:22 51:17 162:2 179:19 219:20 220:8 226:6,11 294:24 296:24 299:18 supposedly 263:20 sure 38:16 39:20 43:6	55:16 60:2,14 62:10 66:15 67:16 68:2,4 72:16,16 74:19 75:5,6,22 89:3 98:21 115:24 119:19 127:10 133:20 137:2 141:13 142:8 142:14 143:2 145:1 149:21 150:11 157:4,8 157:14 159:16 162:24 164:7 165:10 167:5 170:10 174:13 174:19 175:12 180:12,21 183:18 187:21 187:22 188:6 188:10 190:22 197:24 206:15 206:18 207:9 207:17 208:1 209:12,14,18 213:12 222:13 222:13 223:9 225:3 228:14 231:8 240:14 242:20 247:9 251:2,9,12 254:12 268:6 272:5 276:11 281:7,8 284:17 284:25 285:16 285:19 302:16 305:6 306:10
--	---	--	---

[sure - teller]

Page 77

<p>311:21 314:19 surprise 136:22,24 surprised 266:16,19,19 surrounding 13:20 128:25 sustain 27:1 92:11,14 93:1 sustained 29:1 29:5,7 30:16 35:15 56:9,15 62:4 82:22 88:7,17 93:4 134:17 168:4 181:10,13,14 181:20 306:4 309:9 sustaining 29:18,21 swaps 282:3 swear 31:7 94:4,6 124:13 124:15 175:24 switch 143:25 165:22 swore 255:2 sworn 31:5 94:2 175:22 177:10,24 228:22 229:17 229:19,20 232:19 235:14 235:18 238:13 238:19 247:14 262:17 265:7,9 283:11</p>	<p>system 110:23 120:9,10,14 systems 120:7</p> <hr/> <p>t</p> <hr/> <p>t 5:2,10 316:1,1 tab 64:2,12,13 64:23 66:25 69:25 233:1,1 233:5 234:19 309:17 table 177:2 tabs 233:6,13 233:18,20 234:5,8 309:19 tail 300:8 take 8:8,25 9:21 10:4,9,23 23:2 24:4 34:11 37:7 47:6 56:25 67:9 71:11 74:24 81:24 83:13 109:17 114:9,13,21 115:1 123:18 164:5 170:12 171:9,22 172:19 173:5 173:18 175:9 193:2 204:4,18 212:8,16 213:12,16,22 214:16 215:5,6 217:9,18 218:11,11,15 218:22 219:2 219:21,23</p>	<p>220:9,19,21 221:14 222:1,4 225:13,14 238:8 245:23 256:10 262:10 271:9,18 272:4 272:18 293:9 taken 13:4 14:19 85:19 89:13 92:9 104:14 308:17 talk 9:10,13 12:9 87:16 118:12 119:8 210:17 212:7 216:11 217:5 217:25 227:15 228:15 talked 78:10 103:1 114:25 203:17 217:17 295:8 talking 11:5 14:18 27:17 52:5,6 55:13 63:10 72:2,6 80:9 85:17 87:10 104:15 116:6,7 121:14 121:23 122:5 183:20 201:19 268:23 tax 277:20 278:1,8,11 279:6,8,10,11 279:13,15,17 284:21 285:3</p>	<p>285:14,21 taxes 279:1 team 23:11 36:6 37:23 61:7 63:25 64:1,8 69:22 128:22 129:6 145:10 152:10 162:8 224:20 225:1 226:8 227:12 251:21 296:18 297:21 team's 226:16 technical 63:18 207:17 208:1 telephone 203:24 214:20 216:15 telephonic 172:12 216:11 217:5 telephonically 4:9,10,11,12 4:19,20,21,24 tell 15:7 21:15 57:10 118:14 125:6 144:11 147:1 154:24 162:12 167:16 167:21 187:9 193:10,19 210:25 229:25 269:17 295:11 303:5 309:4 teller 61:16 62:1</p>
---	--	---	---

<p>telling 50:15 64:8 154:17 169:17 219:12 temporarily 14:13 tender 95:10 tens 17:17 63:4 term 63:18 125:14 131:14 132:3 136:20 141:13 149:21 193:17 198:23 233:17 236:3 terms 38:25 52:15,16 99:23 99:24 101:8,10 111:22,25 112:15 173:3 188:10 193:21 302:24 305:8 terra 80:7,9 test 287:6 testified 54:17 60:18 61:13,17 61:23 69:8 96:11,19 100:13,22 101:7,11 109:14 111:21 121:11 128:14 134:23 142:5 152:9 157:18 160:9 165:1,23 169:25 194:8 278:22 298:12 311:9</p>	<p>testify 6:23 17:1 18:23 44:13 50:10,18 50:23 64:18 65:18,21 66:19 100:10 298:14 testifying 28:13,17 29:8 29:23 31:2 54:18 137:4 251:10 testimony 20:2 20:12 26:6 31:8 56:24 61:24 69:12 94:6 95:11 101:14 106:20 111:12 121:11 124:15 125:8 153:2 159:6 175:8,25 177:24 213:19 216:9 225:22 254:15 273:11 283:25 286:14 286:21 299:1 299:25 300:2,4 304:22,24 311:13 314:17 tether 57:23 text 10:17 173:12 218:20 219:11,14,19 220:6,7 thank 8:3 9:12 14:25 15:1 18:15 26:14,15</p>	<p>31:21 34:14 45:12 46:4,25 49:14 53:2 57:11 60:10 66:10 68:5 83:16 93:13 94:10 99:14 112:24 113:21 123:12,15 124:3,6 134:21 135:10 137:17 139:2,11 150:18 171:2 174:23 175:4,6 175:7,14 191:19 232:2,3 287:22 313:12 313:14 314:17 315:6,9,10,11 315:12 thanks 93:20 287:21 thanksgiving 302:16 304:4,9 311:25 theft 15:24 thereof 305:10 thereon 29:19 202:22 thick 46:17 thieves 15:22 24:3 thing 135:25 146:22 236:20 241:19 304:8 315:1</p>	<p>things 16:17 52:15 62:10,12 92:15 99:22 100:4 122:10 136:11 145:18 166:18 167:5 194:14 247:24 262:23,24 266:24 276:17 288:23 298:9 306:10 307:19 think 12:6 29:17 30:2 35:1 39:16,23 40:22 41:2,12 42:3,21 43:3 48:10 49:5 52:15 54:2,3 54:18 56:24 61:7 62:14 63:25,25 65:5 66:6,20 68:25 72:11 74:16 75:4,8 80:22 84:21,22 88:22 89:13,25,25 103:6 113:10 114:19 121:13 123:1 133:14 134:7,20 137:22 138:22 151:18 152:16 153:24 168:22 171:13 179:23 182:15,25 189:19 191:15 192:25 197:2</p>
---	--	---	---

198:10 207:18	66:24 67:4	thousand	50:8 54:13
209:18 211:7	73:9 117:9	308:19	58:15 62:8,9
214:1 220:17	126:18 128:15	thousands 63:4	64:2,10,17
221:17 225:4,7	151:13 199:12	76:10 227:21	65:9 68:16
225:11 227:21	224:10 252:15	thread 80:9	80:24 83:10
232:6,23 233:8	268:2 277:14	threatens	99:18 100:2,7
233:15 234:23	280:22 291:15	23:16	101:6,18
236:17,25	thirty 196:22	three 16:17	106:24 109:18
240:12,13	196:23	18:21 19:1	109:21 110:19
241:3,9 244:4	thompson	20:24 21:4	115:16,22
245:5,16	49:19 55:12	60:1 86:16,25	119:6 127:15
247:19 251:11	57:3,9 116:11	87:6 100:5	128:23 131:10
251:25 253:4	126:4,6 127:23	118:24 175:13	132:19 133:9
253:10,22	129:11 130:7	195:20 229:2	133:14,22,25
254:6,7 255:16	130:19 133:1,5	232:21 233:13	136:6,7 145:6
257:2,6 260:25	133:11 135:15	233:18 235:3,6	146:23 151:5,6
263:1,12 266:6	135:19,22	235:7,22	152:13 153:10
266:19 268:12	139:16,20,25	237:20 240:25	154:10 159:14
268:13 269:4	145:9 146:10	243:11 266:3,6	160:1,11,12
272:10 273:4,7	151:4,9,13	266:10 269:2	162:3,22
275:6 276:1,6	152:2 160:16	275:2 277:2	163:10,21
277:13 279:19	160:18 166:23	284:19 297:20	165:6,20 166:1
279:20 283:8	167:1 168:19	298:1	166:6 167:6,13
284:5,16,17,18	172:6,16	thumbs 82:7	168:16 169:9
285:9 286:5,9	173:14 215:10	84:16 85:12	169:11 172:14
286:10,10,16	215:22 217:7	86:17 87:1,22	173:10 174:5
288:23 290:5	thought 21:16	88:5	174:12 176:17
294:12 301:16	54:11 62:15	tied 228:4	178:2 181:5
302:1,22	136:7,17 159:6	278:19	186:1 191:1
303:14 307:1	160:9 167:25	time 13:12	194:5 195:1
310:17 311:9	172:25 173:24	18:12,15,20	213:25 214:1
311:19,19	183:9 191:2	19:1,2,15,24	214:10,14
314:10	223:9 290:23	20:6,16 21:2,4	216:19 222:10
thinking 92:8	298:10 300:21	22:16 23:2,10	228:21 236:20
92:25	310:15	23:16 24:14	237:3,4 242:1
third 17:4	thoughts	26:4 32:6	243:9 244:14
18:23 63:7	173:23	48:10 49:6,17	245:11 246:1

248:8,14 249:9	10:11,20 12:7	247:11 248:3	314:17,22
250:17 251:2,7	14:24 16:17	254:13 266:25	315:8
253:10 256:16	17:1 18:16,18	281:14,20	tonight 314:8
258:21 262:15	20:12 23:4	tokens 21:2	took 8:20 10:2
264:2 276:8	26:7 33:7,17	34:5 56:24	11:6,23 13:5
281:4 283:12	33:20 34:23	184:18 246:19	36:8 37:24
284:10 286:8	42:10 48:12	248:5,8,17	76:11 100:7
289:8 294:12	49:5 50:4 51:7	250:14,17,21	105:15 108:25
295:18 297:23	59:25 62:19	252:11 264:22	109:14,18
299:16 303:5,6	64:13 78:13,22	265:11 266:21	125:2 213:7
305:1,8,14	79:12 85:22	267:2 268:9	214:24 239:17
306:2,13 309:1	95:7 97:1	281:11,17,17	272:9 275:9
313:5 314:24	101:15 102:16	281:20	278:10 284:23
315:4	103:8 125:6	told 10:9 28:6	304:17
timeline 18:22	155:16 177:23	61:19 62:16	tool 65:3 164:9
timely 29:17	178:1 188:15	72:9 82:5	164:12 226:11
183:2	188:18 203:17	88:24 91:2	tools 70:2
times 89:15,22	214:8 216:3,5	106:1,1,1,2,5,6	top 37:12 45:8
114:10,11	217:22 226:23	106:9 108:6,10	57:14 67:11
130:14 135:25	251:14 259:1,3	111:3 115:13	71:3,3 75:15
165:14 168:22	273:14 282:14	116:1 117:16	79:19 81:18,20
172:15,17	282:23 286:14	127:21 132:20	97:11,15 98:21
217:8 266:13	286:21 297:24	132:23 133:1,7	151:13 184:4
274:10 288:23	312:5	133:9,11	184:18 278:21
289:14 294:10	today's 6:17	134:24 135:1	290:16,17
294:15,16	7:5 245:8	138:20 146:1	topic 114:16
297:13 301:3,5	together 18:17	148:2 155:25	158:20,20
tiny 234:15	118:1 150:1	162:8 166:18	topics 18:21
title 68:1	202:22 229:10	167:25 174:3	165:22
titled 89:9	268:7 296:15	220:9 226:18	tornado 11:22
193:5 194:18	token 63:16,20	233:16 265:5	15:23 30:10
196:14 197:17	64:23 65:10	288:23 299:12	273:20,22,25
202:13 229:24	67:1,12,25	300:19 301:23	274:4,8,12,15
titles 68:3	143:4,10,13,15	302:8,9	274:19,21,25
today 6:5,10	145:16 184:3	tomorrow 6:15	275:3,6,9,10
6:15,21 8:17	238:24 246:18	286:11 310:20	275:20,21
9:7,23,25	246:21 247:4	313:23 314:8	284:24,25

301:9	138:21 141:19	transcribed	239:9,13
total 36:8	143:18 146:17	3:25	240:16 241:22
45:16 52:14	165:24 166:13	transcript	242:4 244:24
195:22 196:2	167:14 168:8	113:5 114:5,18	248:20 250:9
249:24 264:7	168:20	115:8 116:4	250:23 251:1
266:21 269:3	transact 69:21	172:10,22	251:14 253:15
274:22 296:16	transacted	174:1 212:22	255:4,11,16,17
302:22 305:8	69:20 72:19	215:13 244:9	255:22 256:5
totality 297:25	transaction	282:10 312:15	262:2,25 264:1
300:12	25:21 123:9	316:4	264:21 266:21
totals 266:17	236:25 239:1	transfer 8:8	267:1,2,5,15
tough 43:15	247:11 248:11	25:16 34:11	268:3,8 273:19
towards 23:5	302:11 310:3	42:2,4 51:6	274:18 285:12
158:21	transactions	64:23 171:24	285:13 305:9
tower 4:6	8:10 17:8,10	171:25 202:21	310:16
traceable 20:4	17:10,12 20:3	204:4,9 205:8	transferring
track 12:12	20:14 27:22	220:10 237:11	243:19 247:22
17:5 20:5	41:19 42:9	238:21 239:5,9	300:11
63:12,20 64:9	63:2 64:23	242:2 244:17	transfers 9:24
110:24 111:13	66:25 67:1,1,2	245:22 246:6	11:4,12 12:10
121:12,16	67:5 104:24,25	248:9,17 251:4	12:12,17 42:3
122:25 161:17	105:2 107:21	257:6,7 260:9	43:25 45:15,16
161:20 162:1	107:25 110:24	261:18,20	46:6 67:12,25
162:17 164:9	111:6 121:17	262:20 263:7	184:4,13
tracked 63:3	122:2,8,22	265:23 269:13	185:21 210:17
276:13	184:19 185:6	269:21 270:3	228:15 230:23
tracker 226:8	185:15,18,19	271:10,13,13	230:25 233:20
226:11	185:20 225:4	274:13,15,21	233:22 235:23
tracking 78:2	226:6 237:25	278:6,8 310:7	235:24 237:18
144:7 225:4	249:23 251:24	310:8,11	243:19 245:4
trades 63:4	252:10 253:19	transferee	245:12,14,18
143:16 165:11	253:21 254:12	242:5	245:21 246:11
300:13	254:13 256:22	transferred	246:13,18
trading 62:17	262:1 266:5	11:6,20 25:11	247:3 252:2,7
103:19 111:18	271:15 296:11	25:14,16,17	252:7,13 253:8
128:22 135:2	301:15,16	48:19 112:7	254:15,18,19
137:1 138:12	306:20 310:4	229:3 237:5	254:21,22

262:18 263:5	truth 26:12	tweet 5:23 72:2	96:3 100:5
263:17,20	30:11 31:9,9,9	72:12,12 73:18	114:11 118:24
264:16,17	56:11,16 61:16	73:19 75:2,17	120:7,15 121:7
265:10 266:3,4	62:1 94:7,7,8	75:18 79:7,23	129:9 157:15
266:8,10,13,17	95:6 124:16,16	80:4,10,12	173:11 182:16
268:13,17,17	124:17 125:6	82:1 179:1,7	191:17 192:22
274:1,5,24	176:1,1,1	181:3 301:1,6	195:3 202:12
275:2,20	181:17	tweeted 17:12	202:15 212:25
297:17	try 13:14 56:13	71:25 78:25	214:12,23
transform	79:6,15 178:13	79:1	230:19 235:8
218:16	188:14,18,24	tweeting 72:5	249:6 253:17
transmit	227:6 286:17	tweets 75:7	257:11 274:24
187:15	287:13	twice 194:13	276:4 283:24
transmittal	trying 27:24	214:21 284:19	284:19 292:3
237:24	113:12 182:24	twitter 16:22	303:4,13
transparent	225:9 226:2,3	24:17 70:5,7	309:19
110:24	tuesday 37:8	71:11,15,18,19	type 112:8
trappers	tuned 30:25	71:21,22,24	184:14 185:21
289:15	turn 33:1 53:6	72:7,10,10,13	236:24 247:10
treasury 30:9	79:21 81:14	72:15 73:6,11	281:18,20
304:3 311:22	95:23 138:5	74:25 75:7	types 297:3
trial 6:17 16:15	157:22 189:2	145:24 146:2,4	306:6
20:11 26:18	191:12 193:10	146:7,9,12,17	typical 198:4
33:16 200:19	193:16 196:13	146:20,21	typo 194:12
tried 181:19	197:25 200:3	152:12 160:10	u
trouble 35:11	200:11 205:11	160:15,19	u.s. 2:3 30:9
true 32:23 33:8	205:22 206:7	301:2	57:20 105:20
51:23 52:10	210:8,14	twitter's 70:25	112:15 204:10
61:21 62:14	212:21 225:23	71:7	237:9,10 239:8
63:20 64:22	247:1 259:19	two 17:14	248:7 252:1
68:17,18 80:14	270:17,21,22	19:14 22:24	256:13 278:19
86:16 88:3,23	turned 7:8	33:23 55:3	u.s.c. 32:22
89:10 92:12,20	270:25 285:20	75:21,24,25	ultimate
92:23,24	turning 81:15	76:13 77:7,10	273:25 274:6
218:23 226:7	260:7	77:17 78:1	ultimately
297:19 316:4	turnover 9:15	91:16 92:18	13:21 14:11
	270:20	94:23 95:17	226:12 238:1

<p>266:4 268:25 unable 6:7 9:1 unanimous 13:2 unavailable 104:25 unaware 262:12 263:6 unclaimed 306:8 uncover 17:6 uncovered 148:20 149:6 uncovering 149:23,24 undeployed 202:21 under 6:6 13:11 14:24 16:8 19:12 20:20,25 21:12 21:23 22:14 23:3,25 24:18 26:1 32:22 38:15 40:12,19 62:19 65:1 68:13 75:2 78:13 83:20 95:4 137:14 154:19 155:11 214:7 216:2 225:17 226:22 228:22 238:17 238:18 252:17 254:23,24 256:20 258:21 273:13 278:2</p>	<p>282:23 286:17 289:9,9 291:23 293:18 294:8 307:23 308:11 312:4,7 underlying 307:24,25 308:5,7,12 underneath 238:9 understand 39:20,21 40:1 40:2,11,12,15 40:16,19 43:4 46:3,9 48:5 58:22 60:18,23 61:4,13,19,23 62:24 65:24 69:7,11,13,16 69:23 75:20,24 84:8 90:16 95:3 97:25 121:10 122:10 140:5 148:24 163:2 174:19 181:18 208:17 214:7 225:1,3 226:22 227:13 261:1 272:6 281:9 298:23 299:8 understanding 80:23 96:21 109:2 132:19 136:9 138:14 138:16 139:25 150:6 152:1</p>	<p>157:6 160:21 163:12,15 164:2,8 165:23 166:17 167:13 167:24 168:7 169:5,7,20 173:4 179:21 197:5,8 206:16 247:9 291:23 291:24 292:1 299:11 300:8 300:10 understands 67:14 understood 17:1 20:7 26:5 27:11 50:15 66:22 67:18 107:19 108:11 112:19 130:21 132:17 136:25 147:13 149:7 159:5 162:2 163:11 179:20 181:16 188:18 210:22 211:12 216:2 227:11 254:9 273:13 282:22 298:11 299:3 306:18 309:10 312:4,7 315:3 undertaking 116:9,13 underwater 302:25</p>	<p>undisputed 8:6 9:19 11:3,23 unfamiliar 98:1 unhappy 160:19,21 united 1:1,18 285:2 unjust 9:16 unmute 137:23 138:1 unmuted 46:21 137:24 unmutes 7:10 unmuting 55:3 unnecessary 17:7 unprofitable 294:25 unslashed 283:2 unstable 94:1 unsupported 10:7 untimely 29:20 unwind 202:20 updated 28:8 309:14 upper 186:15 urata 116:11 126:4 135:15 135:19 139:16 151:4,9 160:16 160:18 166:23 167:1 168:19 172:6,16 173:14 215:10</p>
---	---	---	--

<p>215:22 217:7 urge 14:25 usd 285:12,21 usdc 57:19 246:21 usdt 57:23 use 12:18,25 13:5 15:5 16:6 34:9 45:4 56:14 64:9,11 65:3 66:15 70:2 71:19 83:1 85:15,21 125:14 131:14 132:3 136:20 142:9,12,25 143:3,9 144:1 157:20 175:10 204:21 227:10 227:16 259:8 263:16 272:3 273:23 283:12 295:11 308:21 used 8:6 9:20 11:15 14:20 15:23 16:22 20:4 24:10 26:4 94:19 107:19,20 109:10 111:13 111:16 122:8 132:4,4 162:17 164:9,15,17 169:16 198:24 204:3,8,15 205:6 229:4 239:18 240:4</p>	<p>241:23 242:10 242:13 243:7 249:4 250:17 251:21 262:9 267:14 268:9 268:19 271:8 271:18 273:25 274:8,10,12,15 274:21 277:12 278:22 285:15 299:13 301:9 304:8 308:15 useful 227:4 user 140:11 users 140:16 uses 230:25 using 3:9 12:11 18:13 63:25 64:1 71:18 104:4 120:6 128:15 227:9 227:19 243:20 246:19 249:19 251:7 259:24 261:2 264:14 275:6 285:1 293:22 310:4 ust 89:9 usual 130:18 usually 167:21 utilized 164:3 228:23 229:2,8 229:13</p>	<p>vague 40:6 58:14 vaguely 63:17 66:1 valid 196:17 200:15 value 48:10,12 48:13,19 49:16 51:2,3,5,6,7 52:3,6,7,14 54:1,2,3,15,19 54:19 56:24 76:13 120:16 120:18,20 237:9 238:24 248:3,7,7 252:1 256:14 264:8 266:16 266:21,25 278:9 284:23 305:16,17 values 49:5 50:8 varied 131:10 165:6 variety 131:20 various 53:5 83:11 281:11 vast 12:10 132:15 vaults 57:6 vehicle 277:13 vel 4:20 18:17 34:22 veritext 316:20 version 44:22 131:24 180:15</p>	<p>233:5,7 234:1 234:4 260:7 269:7 versus 189:18 189:18 254:18 288:15 victims 272:24 video 82:25 83:9,11,23 84:2,2,11,19 85:2,20 videos 83:15 83:24 84:4 videotape 85:19 view 13:10 63:22 107:14 112:2 160:1 165:20 viewed 90:11 visible 62:25 232:22 274:2 283:6 volatility 79:2 80:1,5 voluminous 308:22 voluntarily 13:13 33:20 voluntary 13:22 vote 309:1 311:24</p>
	<p>v</p>		<p>w</p>
	<p>v 1:14 3:2 5:3,6 6:3,16</p>		<p>w 5:2 wait 151:6 155:4 170:24</p>

[wait - we've]

Page 85

261:23	269:14 270:4	268:21,21	302:11 306:23
waiting 113:19	271:9,10,18	270:4,18 276:2	307:16 311:8
233:9	272:4 273:17	304:1,9	313:24
waiver 200:12	274:13,16,19	want 6:13 7:13	wanted 109:23
200:14	274:22 275:3	7:20,25 8:2	136:5 169:6
wallet 11:19,19	281:18 282:5	9:13 12:9	222:23 296:4
24:20,20,23,24	283:13 296:13	18:15 24:5,12	298:6
25:1,9,10	301:7 311:22	26:19 27:17	wanting
53:18 54:8	312:11	28:25 29:25	157:21
65:10 77:16,17	wallets 8:8,9,9	30:4 45:20	wants 87:16
77:17 78:1	16:10 25:4,7	56:20 65:19	91:12
103:25 162:16	34:12,13	77:6,24 83:23	waseem 78:3
182:3,4,4,14	144:25 161:8	85:21 91:6	115:23 116:11
182:17 183:10	164:11,11	92:15 97:24	174:13
184:1 185:22	206:12 210:19	98:25 112:12	watched 85:3
202:23 203:8	218:16,16,18	116:5 118:7,8	watching 7:7
203:14,16,16	218:18,22	121:10 122:10	way 9:6 12:18
203:20,20	230:23 233:21	123:20,21	40:22 44:16
204:2,2,6,9,9	233:22 235:25	127:1 129:24	66:25 70:3
204:18 205:8	235:25 236:3,4	130:12 135:18	73:9,10 111:16
205:12 206:22	238:12,14,18	138:10 139:9	111:18 120:25
206:24 207:16	239:14,14	143:25 148:18	124:5 148:12
209:22 229:5	240:17 241:23	153:13 158:20	152:16 153:25
236:6,6 237:2	247:5,5,18,18	160:22 163:11	158:22 161:24
237:13 238:10	247:20,20,21	193:17 203:5	169:17 199:7
238:17,21	247:21 248:21	206:15 208:12	226:17 242:22
239:6,6 240:16	249:18 250:23	210:17 213:9	243:10 259:25
240:18,19,20	253:14 255:3	221:1 228:15	263:23 264:11
242:4,5,6	255:11,15,19	228:17 231:3,3	272:9 300:17
243:14,14	256:15 262:3,3	259:23 260:16	314:1,13
247:13,14	262:19,19	264:10 269:7	ways 226:15
248:20 251:5	263:5 264:22	275:8 286:4,7	we've 27:22
255:23,23,25	264:23 265:12	288:11 289:16	28:7 30:24
256:4 257:3,10	265:12,16	289:21 291:12	58:6 79:12
257:12,14,15	266:3,13 267:1	292:6,25 295:4	82:19 101:20
258:3 262:10	267:1,18 268:3	295:21 297:14	203:16 232:22
263:4 268:16	268:4,4,18,18	301:1,14,15	

webpage 66:16	wife 75:20,24	72:25 74:12,16	witness's 80:23
website 73:7	75:25 76:7,16	75:12 76:23	120:1 299:1
162:13 183:16	78:5,7 147:16	77:21 82:25	witnessed
week 20:2	wildly 20:7	83:21 84:25	114:8 217:20
88:12 119:7	william 4:19	85:6 87:14	217:23
214:11 228:9	willing 295:14	93:9,11,14,21	witnesses 6:23
284:19	300:22	94:2,4,20	10:12,13 16:25
weekly 20:2	wind 256:23	95:23 97:13	18:22 27:1
57:5 58:1	wish 83:15	99:1 102:1	287:10 313:18
110:17 111:1	wished 295:11	106:11 114:12	woman 232:24
119:1,2,5	withdraw 28:9	116:24 117:1,3	233:2,4 261:5
129:2,5,6,11	28:10 91:12	117:5,8,16,21	wonder 14:3
129:14,17,24	244:16 251:23	117:25 118:5	word 78:17
133:16 148:16	274:7	118:10,19,21	85:1,1 106:7
152:9,17	withdrawals	118:23 119:2	157:20 169:16
161:16 289:1	91:16,22	119:19,22	wording
weeks 276:4	withdrawing	120:5,25	155:19
weighs 14:14	27:12,14,18	122:16 124:13	words 207:8,10
weighting	withdrawn	124:13 125:20	208:20 218:14
120:22	166:4 182:23	137:7,17	239:3
welcome	275:10	150:14 174:20	work 38:14,17
113:23	withdrew 25:4	175:6,8,22	38:18,21,22,23
went 11:5,20	25:5,10 92:6	177:14 180:20	39:5,14 60:16
47:20 91:10	276:7 277:16	182:14 183:13	75:25 76:4
94:1 241:7	284:24 285:6	183:15,18	78:2 97:19
245:16 257:18	witness 5:3,7	187:1 194:4	136:13,23
whatsapp	6:23,25 26:17	195:25 205:3	157:19,23
10:17 115:19	30:19 31:2,5	205:19 213:2	158:7 161:1
173:12 174:8	31:10,19,20	218:25 219:3	168:23 169:2
218:19 219:11	32:14 36:17	220:3 221:24	169:15 176:12
219:14,20	39:3 44:7,12	222:3 230:14	263:22 296:15
220:6,7	44:14 48:16,22	254:5 275:19	workbook
whichever	48:23 49:9,9	287:3,5,13,16	233:18 235:22
260:18	52:21 55:8	295:8,13 299:1	237:17,18
who've 6:22	59:10 64:19	307:13 310:9	242:23,25
wholly 250:9	65:19,22 66:3	310:12,14	245:3,14 246:1
	66:8 70:12	314:15,19	246:6,17 247:3

250:15 252:15	227:3,7,12	writing 173:10	188:3,19 189:6
253:12,12	worth 8:10	196:17 200:16	189:7 190:18
254:17,22	10:10 16:5	210:1 218:20	192:7 193:4,18
255:1 260:7,10	17:24 21:3	218:24 219:1	193:20 196:15
261:18,20	24:22 51:25	219:23 220:17	199:4 206:3,6
262:18,24	52:12 53:24	222:5 298:5	207:3 210:12
263:21 264:16	54:7,8,9 57:5	writings	211:10,11,12
264:17 265:8	68:7 80:8	308:23	211:16 213:4,8
265:10 266:2	159:7 218:15	written 41:2	215:7 223:17
267:6 269:9,10	242:1 243:9	95:10 103:9,14	224:3 225:10
269:11	245:8,11	115:13,25	225:25 229:15
workbooks	248:17 250:21	141:2,9 170:11	230:1,3 231:20
232:21 233:1	262:4 264:1,5	170:15 174:2	232:8,16,25
233:16,18	264:23 267:14	201:5 202:14	233:2 234:15
235:3,4,6,7,8	267:25 268:8,9	220:11 227:22	235:9 238:4,11
235:22 253:17	274:1 276:7	228:8 289:13	241:21 242:20
268:7	277:11,25	wrong 151:7	243:5 249:3,14
worked 35:20	280:23 302:22	197:3 211:7	251:22 254:13
35:21 97:19	would've	265:16 310:16	255:8,9 260:8
128:22	236:20,22	wrote 209:8	260:20,23
working 35:18	279:22	262:12 296:7	261:19 264:20
39:10 110:23	wound 23:12	296:20	269:23,25
125:23 159:22	245:5 277:2	x	270:1,6 275:13
169:6 224:25	wrap 24:9	x 1:5,11,17 5:1	276:18 278:15
works 66:1	25:23 26:5	5:10 215:5,6	284:6 290:22
162:24	wrapped	y	291:3,8 298:1
worksheet	131:22 236:25	y 215:6	305:18 307:17
243:19 251:23	237:5 300:10	yeah 27:11,13	310:13 311:17
252:10 256:3	300:15,18	40:11 58:20	312:9
259:4 267:6	wrapping	77:21 79:20,22	year 17:11
268:15	280:4	100:7 117:4,16	21:5 24:2,12
world 64:6	write 265:21	118:24 120:5	159:15 185:11
251:16	288:12 296:14	146:23 150:11	200:25 278:11
wormhole	296:18 297:15	153:24 156:21	291:20 292:3
110:25 224:21	297:22	164:8 175:17	year's 243:11
224:25 225:25	writes 23:19	177:5 184:2,21	years 102:21
226:3,6,9,25	151:13,15		

[yellow - zrcb1]

Page 88

yellow 237:21 237:25 238:5 245:4,15 252:6 256:25 262:2 263:3 264:24 266:5,8,14 268:8,23 yellow s 267:16 yep 81:23 142:16 237:19 248:4,6,10 257:24 281:17 290:2 309:16 yesterday 6:8 180:1 296:9 309:23 310:8 310:11 yield 242:13 yields 140:15 york 1:2,20 4:7 4:17 17:20 19:13 88:9,10 88:11,14 278:3 301:22,24 302:2	124:4 241:19 260:13 307:12 307:13 zrcb1 69:17
z	
z 215:7 zaleski 277:5 zapper 57:15 64:1 282:25 283:7 zero 88:21 89:9 89:17 279:19 279:22 zoom 3:9 6:19 7:7,8 15:6 43:14 97:10	